TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Panhandle Regional Planning Commission

Public Utility Commission of Texas

Texas Department of Transportation

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 28, 2008

Appointed to the Lavaca-Navidad River Authority Board of Directors for a term to expire May 1, 2013, Olivia R. Jarratt of Edna (replacing John Shutt of Edna whose term expired).

Appointed to the Lavaca-Navidad River Authority Board of Directors for a term to expire May 1, 2013, Jon Bradford of Edna (replacing Basilio Jimenez of Edna whose term expired).

Appointed to the Lavaca-Navidad River Authority Board of Directors for a term to expire May 1, 2013, Sherry Kay Frels of Edna (Ms. Frels is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Harold Barnard of Waxahachie (Mr. Barnard is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Michael Cronin of Terrell (Mr. Cronin is being reappointed).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Shanda Perkins of Burleson (replacing Vincent Cruz of Fort Worth who resigned).

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2013, Linda Timmerman of Streetman (Ms. Timmerman is being reappointed).

Appointments for March 31, 2008

Appointed as District Attorney for the 100th Judicial District for a term until the next General Election and until his successor shall be duly elected and qualified, Luke Inman of Wellington (replacing Stuart Messer of Memphis who was appointed as Judge of the 100th Judicial District Court).

Appointed to the Office of Rural Community Affairs for a term to expire February 1, 2009, Woodrow Anderson of Colorado City.

Appointed to the Alamo Area Regional Review Committee for a term to expire January 1, 2010, Dan Mittel of Fredericksburg (replacing John Thompson of Fredericksburg whose term expired).

Appointed to the Nortex Regional Review Committee for a term to expire January 1, 2010, Robert Fenoglio of Nocona (replacing Paul Gibbs of Nocona whose term expired).

Appointed to the Nortex Regional Review Committee for a term to expire January 1, 2010, Linda Rogers of Seymour (replacing James Coltharp of Seymour whose term expired).

Appointed to the Nortex Regional Review Committee for a term to expire January 1, 2010, Harlan T. Cardwell of Vernon (replacing Loyd W. Bridges of Vernon whose term expired).

Appointed to the North Central Texas Regional Review Committee for a term to expire January 1, 2010, Pete Dewing of Northlake (replacing George B. Walker of Corsicana whose term expired).

Appointed to the North Central Texas Regional Review Committee for a term to expire January 1, 2010, Christy Schell of Nevada (replacing Clarence Holliman of Mineral Wells whose term expired).

Appointments for April 3, 2008

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2011, Karen Siegel of Houston (replacing Marshall Voris of Corpus Christi who is deceased).

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2013, Allen Cline of Austin (replacing Meng-Sheng "Linda" Lin of Plano who resigned).

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2013, Carolyn Liner of San Marcos (Ms. Liner is being reappointed).

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2013, Ben Gorzell, Jr. of Helotes (replacing Rick Menchaca of Midland whose term expired).

Appointed to the Texas Board of Chiropractic Examiners for a term to expire February 1, 2013, Janette A. Kurban of Pantego (replacing Sandra Jensen of Coppell whose term expired).

Appointed to the Texas Veterans Commission for a term to expire December 31, 2013, John McKinney of El Paso (replacing John Brieden of Brenham whose term expired).

Appointed to the Texas Veterans Commission for a term to expire December 31, 2013, Eliseo Cantu, Jr. of Corpus Christi (replacing Hector Farias of Weslaco whose term expired).

Appointed to the Rio Grande Regional Water Authority Board of Directors. At the first meeting after the directors are appointed, the directors will draw lots to determine their terms so that nine serve terms expiring February 1, 2009 and nine serve terms expiring February 1, 2011:

Jose Barrera, III of Brownsville (Mr. Barrera is being reappointed)

Jimmie E. Steidinger of Donna (Mr. Steidinger is being reappointed)

Wayne Halbert of San Benito (Mr. Halbert is being reappointed)

Sonia Kaniger of San Benito (Ms. Kaniger is being reappointed)

Frank White of Progresso Lakes

Samuel Sparks, Jr. of Harlingen

Arturo Hinojosa, Jr. of Edinburg

Brian Macmanus of Harlingen

Dario Vidal Guerra, Jr. of Edinburg

Appointments for April 9, 2008

Designating Oliver Bell as Presiding Officer of the Texas Board of Criminal Justice for a term at the pleasure of the Governor. Mr. Bell is replacing Christina Crain of Dallas as presiding officer.

Appointed to the Texas Board of Criminal Justice for a term to expire February 1, 2013, J. David Nelson of Lubbock (replacing Christina Crain of Dallas whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2009, Scott O'Grady of Dallas (replacing Roberto Lopez of Houston who resigned).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2013, Jean Boyd of Fort Worth (Judge Boyd is being reappointed).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2013, Robert Shults of Houston (replacing Barbara Punch of Missouri City whose term expired).

Appointed to the Texas Juvenile Probation Commission for a term to expire August 31, 2013, Billy Wayne McClendon of Austin (replacing Keith Kutler of College Station whose term expired).

Appointments for April 10, 2008

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2012, Fenton Lynwood Givens of Plano (replacing Mac Wilmer Cannedy of Wichita Falls whose term expired).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2014, Jane W. Spears of Wichita Falls (replacing Pamela Odom Gough of Graham whose term expired.

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2014, Charles Engelman of Wichita Falls (replacing Don Ross Malone of Vernon whose term expired).

Appointed to the Midwestern State University Board of Regents for a term to expire February 25, 2014, Shawn G. Hessing of Fort Worth (replacing Patricia Haywood of Wichita Falls whose term expired).

Rick Perry, Governor

TRD-200801913

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Proclamation 41-3145

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that 229 counties in Texas are threatened by extreme fire hazard. Dry frontal passages pose significant fire danger because of the large amount of cured grass across the state. This threat exists in the following counties in Texas:

Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Carson, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Ellis, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Gonzales, Gray, Grayson, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, LaSalle, Lamar, Lamb, Lampasas, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Motley, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Walker, Waller, Ward, Washington, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew my January 29, 2008 proclamation and declare a state of disaster in the counties listed above based on the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 28th day of March, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200801914

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Proclamation 41-3146

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that severe storms and flooding on March 30, 2008, and continuing, have caused a disaster in Sabine and San Augustine Counties in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Sabine and San Augustine Counties, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet this disaster.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this disaster are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 2nd day of April, 2008.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200801915

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0695-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether section 1355.004(b)(2) of the Insurance Code requires group health plans that provide more than 60 outpatient visits for physical illnesses to provide the same number of visits for serious mental illnesses (RQ-0695-GA)

Briefs requested by May 12, 2008

RQ-0696-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether certain kinds of posted agenda items satisfy the notice requirements of the Open Meetings Act, chapter 551, Government Code (RQ-0696-GA)

Briefs requested by May 15, 2008

RQ-0697-GA

Requestor:

Mr. Donald W. Cozad

Collin County Auditor

200 South McDonald Street, Suite 300

McKinney, Texas 75069

Re: Authority of a county auditor to examine and audit various county officials and practices (RQ-0697-GA)

Briefs requested by May 16, 2008

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801990
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 16, 2008

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The Texas Ethics Commission proposes new §20.50, relating to the reporting of the total amount of political contributions maintained.

A campaign finance report is required to disclose the total amount of political contributions maintained in one or more accounts as of the last day of the reporting period. The new rule would clarify what is included in the total amount to be reported.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §20.50 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §20.50 affects §254.031(a)(8) and §254.0611(a)(1), Election Code.

§20.50. Total Political Contributions Maintained.

(a) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

(1) Balance on deposit in banks, savings and loan institutions and other depository institutions; and

(2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.

(b) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained does not include personal funds that the filer intends to use for political expenditures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801905
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.15 - 81.17, 81.19, 81.23

The Office of the Secretary of State proposes amendments to §§81.15 - 81.17, 81.19, and 81.23 concerning disbursement of funds under the Texas Election Code, Chapter 19. These amendments will allow for detail clarification of specific rulings of the Chapter 19 fund for both the county Voter Registrar and the Office of the Secretary of State. These rules designate which goods and services are reimbursable with Chapter 19 funds and outline procedures to be followed by county voter registrars to obtain such reimbursement.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments as proposed.

Ms. McGeehan has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the amendments will be a better use of the Chapter 19 funds and a more efficient reimbursement processing procedure. There will be no effect on small businesses. There is no anticipated economic cost to the voter registrars.

Written comments on these proposed rules may be submitted before 5:00 p.m., Tuesday, May 27, 2008, to the Office of the Secretary of State, Shelia Latting, Manager of Elections Funds Management, P.O. Box 12060, Austin, Texas 78711.

The amendments are proposed under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b) is affected by these proposed amendments.

§81.15. Funding Period.

Chapter 19 funding requests must be received within 30 days of payment to vendor [~~the vendor's invoice date~~]. Travel expense reimbursement requests must be submitted within 30 days of the completion of travel. Temporary employee funding requests may not cover longer than a four (4) [~~12~~] consecutive week period [~~and must be submitted within 30 days of the end of the subject work period~~].

§81.16. Electronic Submission of Chapter 19 Purchase Request Required for Payment.

The Agency shall prescribe an electronic web-based application format for the submission of Chapter 19 Purchase Request for use by each county voter registrar. In addition to any supporting documentation required by this chapter, the voter registrar must submit a signed facsimile or signed scanned image of the supporting documentation via attachment to the electronic submission. If a Chapter 19 Purchase Request is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar [~~in writing~~] within 14 business days of receipt of such form via email, written notification or election response from the web-based system. All electronic requests must be submitted through the designated secured electronic web-based application designed solely [~~only~~] for Chapter 19 purchases, located on the Office of the Secretary of State web site. Facsimile supporting documentation received after 5:00 p.m. will be considered to be received on the next business day.

§81.17. Competitive Bidding Required.

Except for the purchase of voter registration advertising, and temporary staff the voter registrar shall submit bids for the purchase of items or services to be paid for with Chapter 19 funds according to the following guidelines:

(1) No competitive bids for individual purchases of less than $2,000 are required. However, the voter registrar shall take the steps necessary to insure that all charges are reasonable and competitive relative to the local market. (Note: A large purchase may not be divided into small lot purchases to circumvent the dollar limits established by this section. For example, expenditures for computer equipment to a single vendor that total more than $2,000 are subject to the competitive bid requirement and may not be split between printers/scanner/computers.)

(2) Request for funding for individual purchases of $2,000 but less than $10,000 must be accompanied by three written bids from three different vendors stating the vendor's name, complete mailing address, telephone number, and the amount of the bid. Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission. In instances when the specifications on the lowest bid are unacceptable, a signed letter by the voter registrar must accompany stating the reason specifications on the lowest bid does not meet your needs. If a purchase is through the Texas Procurement and Support Services (TPASS) cooperative purchasing programs for state contract purchasing for the State of Texas, bids are not required. Proper documentations must be submitted to indicate the type of procurement service used and the source for those services.

(3) Any request for funding for a purchase of $10,000 or greater must have received the prior written approval of the Agency. Upon receipt of such approval, the voter registrar will advertise for bids in the manner dictated by county regulations. Copies of all bids received will be forwarded to the Agency as an attachment with the electronic submission.

(4) If a purchase is handled by a county's purchasing department, the voter registrar may use county purchasing guidelines instead of those set by paragraphs (1) and (2) of this section. However, a copy of the bids, if applicable per your county, a copy of the county guidelines and signed recommendation of the county purchasing department must be submitted with the Chapter 19 Purchase Request.

(5) Sole source vendor purchases and situations when the lowest bid is not accepted are discouraged. In rare instances when this type of purchase is required, a waiver request, stating a justification, must be submitted and signed by the voter registrar. If the item purchased is greater than $2,000, the waiver request must also be signed by the person responsible for county purchases. Only when a sole source vendor purchase or the acceptance of a bid higher than the lowest bid is required by county guidelines may such purchases be reimbursed with Chapter 19 funds and then, only upon receipt of the waiver request described herein above.

§81.19. Method of Payment.

Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all payments made from Chapter 19 funds will be issued on a reimbursement basis[~~, only after the goods or services have been received~~]. An invoice from the vendor and a copy of the county paid voucher, ledger or bank statement must be submitted with all Chapter 19 Purchase Requests. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule. Payments issued by the Comptroller of Public Accounts will be payable to the county, in the form of direct deposit to a new or pre-existing bank account as directed by the voter registrar. If the county establishes a new account, the county must budget funds to cover all setup fees, check orders and/or service charges associated with opening and maintaining the new account. Chapter 19 funds will not incur any fees or service charges associated with the setting up of a new account. Please note: our office encourages the county to use an existing account and develop a separate fund. The county voter registrar will use such account for the purpose of depositing and/or expending Chapter 19 funds. The voter registrar shall not commingle Chapter 19 fund ledger accounts [~~funds~~] with any other county fund ledger account. The voter registrar shall complete fund reconciliations on a monthly basis. Fund general ledgers or activity

statements must be provided to the Agency semiannually and are considered part of the Chapter 19 fund records and must be available if requested by the Office of the Secretary of State for audit purposes. Except for travel expenses authorized by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), no cash payments may be made from Chapter 19 funds. All disbursement payments of Chapter 19 funds must be made by check or state transfer drawn on the Chapter 19 prescribed bank account as described above. Please be advised, whether the accounts are combined with an existing account or separate accounts are established, it will be the county voter registrar's legal responsibility to maintain a separate bookkeeping system to identify the debits and credits relating to all activities from the receipt of Chapter 19 Funds.

§81.23. Travel Using Chapter 19 Funds Authorized.

(a) Chapter 19 funds may be used to pay travel expenses incurred by the voter registrar and full-time permanent voter registration staffers to attend voter registration seminars and demonstrations. Chapter 19 funds cannot be used to reimburse fully a trip by the voter registrar, unless the purpose of the trip is exclusively related to voter registration. If a voter registrar wishes to travel to a seminar or meeting in which voter registration is not the only topic, the Agency will determine the appropriate portion of the trip expenses that are reimbursable pursuant to Chapter 19 and reimburse the registrar accordingly.

(b) All voter registrars who seek reimbursement from Chapter 19 funds should plan their travel to achieve maximum economy and efficient means of transportation. Hotel shuttles are preferred over taxies and taxies are preferred over rental cars [~~efficiency~~]. A comparison should be made between different modes of travel for the lowest and most economical option. All trips which include reimbursable travel must receive prior written approval from the Agency. An electronic travel request through the web-based application must state the purpose of the trip, itinerary, mode of transportation, and estimated expenses. A Chapter 19 Electronic Travel Request, prescribed by the Agency, and Chapter 19 Purchase Request must be submitted for each traveler within 30 days of the completion of travel. Travel reimbursement requests must include attached receipts for airfare, rental cars, lodging, seminar registration fees, and miscellaneous expenses. Chapter 19 funds will not cover expenses for first class accommodations, tips, valet parking or alcohol. Travel advances will be approved, [~~if at all,~~] on a case-by-case basis. Travel advance funding will not be made for meals, hotel taxes or miscellaneous expenses. Travel advance requests must be submitted through the web-based application in the form of a travel request and include a Chapter 19 Purchase Request for each traveler. No further Chapter 19 Purchase Request will be processed until the final accounting of any advanced travel is received.

(c) Chapter 19 travelers must obtain the lowest cost airfare. Under no circumstances will the amount of a first class ticket be paid with Chapter 19 funds. Voter registrars are to share rental cars whenever practicable. The Agency must give prior approval for the use of a rental car and the voter registrar must make a proper deduction or reimbursement whenever there is personal use of a rental car. The rental of luxury cars will be disallowed, except in special circumstances requiring the use of large cars, i.e., several employees traveling together. Travel by personal car is reimbursable at the rate set in the State of Texas Travel Allowance Guide (the "Guide") per mile with mileage computed using the originating county seat as the departure point and computing final mileage using the Official State Mileage Guide. Travel by personal car is reimbursable as long as it is less than airfare to the same destination. If more than one person is traveling to the same destination by personally owned automobile, the travelers are to ride together in a single automobile if practicable. Overnight lodging is not covered if destination is less than 70 to 100 miles. Rental cars are not an allowable expense when flying to destination city and staying at the host hotel. Note: County procedures will supersede Chapter 19 rules regarding travel advances.

(d) Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination within Texas will receive the actual cost of lodging and meals, but such rates may not exceed the rates set by the Guide. Voter registrars who seek reimbursement from Chapter 19 funds for a trip with a final destination outside Texas will receive the actual cost of lodging and meals not to exceed the out-of-state meals and lodging rates set by the Comptroller of Public Accounts for that location. The out-of-state rate for a city is available from the Comptroller of Public Accounts or the Agency. The voter registrar must be away from his or her home county for at least six consecutive hours to qualify for the partial per diem allowed by the Guide. When requesting Chapter 19 reimbursement, the voter registrar must submit receipts for lodging, airfare, and miscellaneous expenses with the electronic submission of the Chapter 19 Purchase and Travel Request. Amounts in excess of the maximum amounts allowed by the Travel Guide will not be reimbursed. A Meal Itemization Worksheet, prescribed by the Agency, must be entered showing actual costs of meals and signed by each traveler requesting reimbursement as an attachment to your electronic submission. Receipts for such meal costs are not required to be attached, but should be retained by the traveler in the event of a state audit. Texas Government Code, §2113.101, prohibits reimbursement for the purchase of alcoholic beverages, gratuities, and tips.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801956
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 463-5650

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

The Texas Department of Agriculture (the department) proposes amendments to Chapter 1, Subchapter A, §1.24 and §1.30, concerning General Rules of Practice; Subchapter B, §1.53, concerning Collection of Debts; Subchapter C, §1.71 and §§1.73 - 1.78, concerning Minority Purchasing; Subchapter H, §§1.400, 1.402 and 1.404, concerning Public Information Requests; Subchapter K, §1.700 and new §1.701, concerning Employee Training Rules; and an amendment to Subchapter N, §1.923, concerning the department's Food and Fibers Research Grant Program. The department also proposes the repeal of Subchapter D, §1.85, concerning Miscellaneous Provisions; Subchapter E, §1.205, concerning Advisory Committees; Subchapter G, §1.300, concerning Interagency Agreements; Subchapter H, §1.401 and §1.403, concerning Public Information Requests; and Subchapter K, §1.701, concerning Employee Training Rules.

The amendment to §1.24 is proposed to clarify processes regarding witness fees. The amendment to §1.30 is proposed to correct typographical errors. The amendment to §1.53 adds any obligation of the Department to attempt to recover a debt that is imposed by federal law, contract or other agreement to the list of what the department will consider in making a determination of whether to refer a debt collection matter to the attorney general. The amendments to §1.71 and §§1.73 - 1.78 update legal citations, terms and references to the state purchasing agency in the department's minority purchasing rules. More specifically, the amendments reflect that the small businesses and minority owned businesses are now considered as part of the term Historically underutilized business (HUB) and that the purchasing agency is now the Comptroller of Public Accounts. The amendments to §§1.400, 1.402 and 1.404 update references to the department's public information officer and to the agency responsible for administering the state public information program, now the Office of the Attorney General, and update information on payment of charges for public information to reflect the department's current practice. The amendment of §1.700 and new §1.701 are proposed to make the sections consistent with current state law regarding employee training. The amendment to §1.923 is proposed to make the section consistent with amendments made to Texas Agriculture Code, Chapter 42 during the 80th Legislative Session (2007). The law was amended to change the representative of the Southwest Peanut Growers Association to a representative of the peanut industry, due to the dissolution of the Southwest Peanut Growers Association.

The repeal of §1.85 is proposed to eliminate a provision for the use of unmarked vehicles by the department in its enforcement of weights and measures laws. The department no longer utilizes undercover vehicles for enforcement purposes. The repeal of §1.205 removes the Organic Certification Review and Standards Advisory Committee from the list of the department's advisory committees. This committee was eliminated due to the establishment of the Texas Organic Agriculture Industry Advisory Board by the 80th Legislature (2007), whose duties include those carried out by the Organic Certification Review and Standards Advisory Committee. The repeal of §1.300 eliminates the Memorandum of Understanding Among the Texas Department of Agriculture, the Texas Agricultural Finance Authority and the Texas Department of Economic Development. The law under which this memorandum was established has been repealed. In addition, the Texas Department of Economic Development has been abolished and some of its duties transferred to the Office of the Governor and other agencies. The repeal of §1.401 and §1.403 is proposed to delete unnecessary sections. The requirements contained in §1.401 and §1.403 are already specified in the Public Information Act and/or the rules of the Office of the Attorney General. The repeal of §1.701 is proposed to eliminate a section that is unnecessary and replace it with a new section that includes provisions regarding employee training and education required by state law.

Dolores Alvarado Hibbs, general counsel, has determined that for the first five years the amendments and repealed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended and repealed sections.

Ms. Hibbs also has determined that for each year of the first five years the amended and new sections are in effect the public benefit anticipated as a result of enforcing the amended and repealed sections will be to provide interested members of the public with accurate information regarding the department's practices and policies and the department's advisory committees. For the first five-year period the amended and new sections are in effect, there will be no economic cost for micro-businesses, small businesses or individuals who are required to comply with the amended sections and repeals as proposed.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78749. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL RULES OF PRACTICE

4 TAC §1.24, §1.30

The amendments to §1.24 and §1.30 are proposed under the Texas Agriculture Code (the code), §12.016, which provides the department with the authority to adopt rules to carry out its duties under the Code; and the Texas Government Code, §2001.004, which provides that a state agency shall adopt rules of practice stating the nature and requirements of all available formal procedures.

The code affected by the proposal is the Texas Government Code, Chapter 2001, and the Texas Agriculture Code, Chapter 12.

§1.24. Witness Fees.

(a) - (c) (No change.)

(d) The amount of compensation offered or accepted by a witness for their appearance at a hearing or proceeding covered by this subchapter must be disclosed if requested through discovery or during cross-examination.

(e) Nothing in this section shall be construed as prohibiting payment of reasonable compensation to a witness who voluntarily appears at the request of a party.

§1.30. Default Provisions

(a) If a respondent in an action before the department fails to appear in person or by legal representative on the day and at the time set for hearing, the administrative law judge, upon motion by the department's representative, shall enter a default judgment [~~judgement~~] in the matter adverse to the respondent who has failed to attend the hearing. For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the allegations against the respondent in the notice of hearing are deemed admitted as true without any requirement for additional proof to be submitted by the Complainant.

(b) Any default judgment [~~judgement~~] granted under this section will be entered on the basis of the allegations contained in the notice of hearing and upon the proof of proper notice to the defaulting party opponent. For the purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, §§2001.051, 2001.052, and 2001.054, and this section; such notice also shall include the following language in capital letters in at least 12-point boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU AS CONTAINED IN THIS NOTICE BEING ADMITTED AS TRUE, REGARDLESS WHETHER ADDITIONAL PROOF IS SUBMITTED.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200801931
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER B. COLLECTION OF DEBTS

4 TAC §1.53

The amendment to §1.53 is proposed under the Texas Government Code, §2107.02, which provides that a state agency shall adopt debt collection procedures by rule.

The code affected by the proposal is the Texas Government Code, Chapter 2107.

§1.53. Referrals of Matters to the Office of the Attorney General for Collection.

(a) - (c) (No change.)

(d) In making a determination of whether to refer a matter to the attorney general, the department shall consider:

(1) - (4) (No change.)

(5) the likelihood of collection; [~~and~~]

(6) any obligation of the Department to attempt to recover a debt that is imposed by federal law, contract or other agreement; and

(7) [~~(6)~~] any other relevant factors established by the department's procedures for collection of debts.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER C. MINORITY PURCHASING

4 TAC §§1.71, 1.73 - 1.78

The amendments to §§1.71 and 1.73 - 1.78 are proposed under the Texas Agriculture Code (the code), §12.029, which requires that the department establish by rule policies to encourage historically underutilized businesses to bid for contract and open market purchases of the department; and the Texas Government Code, §2161.003, which provides that a state agency shall adopt the rules of the Texas Comptroller of Public Accounts relating to administration of the Historically Underutilized Businesses (HUB) program.

The code affected by the proposal is the Texas Government Code, Chapter 2161, and the Texas Agriculture Code, Chapter 12.

§1.71. Statement of Purpose.

The purpose of these sections is to provide a procedure to encourage [~~minority and female-owned small businesses and~~] historically underutilized businesses to bid for contract and open market purchases of the Texas Department of Agriculture and to maximize contracting opportunities for these businesses.

§1.73. Identification of Historically Underutilized [~~Minority and Female-owned~~] Businesses [~~and~~] (HUBs) [~~HUBs~~].

(a) The department will obtain the Texas Historically Underutilized Business Certification Directory from the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~] to identify minority and female-owned businesses certified as HUBs in the state.

(b) (No change.)

§1.74. Certification Requirements.

(a) All [~~minority and female-owned businesses and~~] HUBs must be certified under the historically underutilized business program of the Comptroller of Public Accounts [~~Texas Buildings and Procurement Commission~~] to be eligible to participate in contract and open market purchases of the department.

(b) The department will assist [~~minority and female-owned businesses and~~] HUBs to become eligible for certification and participation in bidding on contracts to be awarded by the department.

§1.75. Outreach.

(a) The department will attend forums sponsored by the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~] relating to [~~minority and female-owned businesses and~~] HUBs to improve its efforts in soliciting these businesses for bidding on department contracts.

(b) (No change.)

§1.76. In-House Training.

The department will provide in-house training for all its personnel involved in making purchases on behalf of the department which will focus on soliciting [~~minority and female-owned businesses and~~] HUBs to participate in bidding on contract and open market purchases of the department.

§1.77. Tracking of Progress.

The department will maintain a computerized program to keep track of all expenditures and purchases involving [~~minority and female-owned businesses and~~] HUBs.

§1.78. Historically Underutilized Business Program.

The department adopts by reference the rules of the Comptroller of Public Accounts [~~Texas Building and Procurement Commission~~] in 34 [~~1~~] Texas Administrative Code Part 1, Chapter 20, Subchapter B [~~111.11 - 111.238~~], concerning Historically Underutilized Business [~~Certification~~] Program. Copies of the Comptroller of Public Accounts' [~~Texas Building and Procurement Commission~~] rules are filed at the department, located at the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER D. MISCELLANEOUS PROVISIONS

4 TAC §1.85

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §1.85 is proposed under Texas Government Code, §2171.1045 which provides that each state agency shall adopt rules relating to the assignment and use of the agency's vehicles.

The code affected by the proposal is the Texas Government Code, Chapter 2171.

§1.85. Designated Motor Vehicles Exempt from Identification or Inscription.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
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SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.205

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §1.205 proposed under the Texas Government Code, §2110.005, which requires an agency that establishes an advisory committee to adopt rules relating to the committee; and the Texas Agriculture Code, §12.016, which authorizes the department to adopt rules necessary to carry out its duties under the code.

The code affected by the proposal is the Texas Government Code, Chapter 2110 and the Texas Agriculture Code, Chapter 12.

§1.205. Organic Certification Review and Standards Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. INTERAGENCY AGREEMENTS

4 TAC §1.300

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §1.300 is proposed under §12.016, which authorizes the department to adopt rules necessary to carry out its duties under the code.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§1.300. Memorandum of Understanding Among the Texas Department of Agriculture, the Texas Agricultural Finance Authority and the Texas Department of Economic Development.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
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SUBCHAPTER H. REQUESTS FOR PUBLIC INFORMATION

4 TAC §§1.400, 1.402, 1.404

The amendments to §§1.400, 1.402 and 1.404 are proposed under the Texas Government Code, §2001.004, which provides that a state agency shall adopt rules of practice stating the nature and requirements of all available formal procedures.

The code affected by the proposal is the Texas Government Code, Chapters 552 and 2001.

§1.400. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Public [~~Officer for public~~] information officer--A department employee designated to respond to requests for public information. [~~Each division within the department has its own officer for public information.~~]

(3) - (5) (No change.)

§1.402. Charges for Providing Copies of Public Information.

(a) The charge to any person requesting access to public information or copies of public information from the department will be the charges established by the Public Information Act, and the rules of the Office of the Attorney General [~~Services Commission rules, 1 Texas Administrative Code §§111.61 et seq, as amended~~], to the extent that they do not conflict with the Act.

(b) The charge provisions established by the Office of the Attorney General [~~Services Commission~~] do not apply to requests for copies of publications compiled and printed by the department for public dissemination, and the department shall determine the charge to be made for such publications unless the charge is set by law.

(c) Requests for public information for which the Public Information Act or the Office of the Attorney General [~~Services Commission~~] have not established a charge will be charged at the actual cost to the department to provide the item.

~~[(d) If a request is made for 50 or fewer pages of paper records, a charge for cost of copies shall be made, but a charge for costs of materials, labor or overhead shall not be made unless the information to be copied is located in more than one building or in a remote storage facility.]~~

§1.404. Prepayments and Waiver of Public Information Charges.

(a) (No change.)

(b) The department will waive the charge for any public information request that, without the waiver, would result in a total charge of $40.00 [~~$10~~] or less.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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4 TAC §1.401, §1.403

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §1.401 and §1.403 is proposed under the Texas Government Code, §2001.004, which provides that a state agency shall adopt rules of practice stating the nature and requirements of all available formal procedures.

The code affected by the proposal is the Texas Government Code, Chapters 552 and 2001.

§1.401. General Procedures for Requests of Public Information.
§1.403. Access to Information When Copies Are Not Requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER K. EMPLOYEE TRAINING RULES

4 TAC §1.700, §1.701

The amendments to §1.700 and new §1.701 are proposed under the Texas Government Code, §656.048, which provides that a state agency shall adopt rules related to training and education; and §656.046 which sets forth what a state agency's training program shall include.

The code affected by the proposal is the Texas Government Code, Chapter 656.

§1.700. General Provisions.

(a) Use of state funds. The department may use state funds to provide training and education for its employees in accordance with the provisions of the Texas Government Code, §§656.044 - 656.049.

(1) - (2) (No change.)

(3) Training program outline. The training and educational program of the department may include the following four elements:

(A) preparing for technological and legal developments;

(B) increasing work capabilities;

(C) increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage; and

(D) increasing the competence of state employees.

(4) - (5) (No change.)

(b) (No change.)

§1.701. Employee Training: Reimbursement for Costs of Employee Education.

(a) General. The department may reimburse, upon successful completion, the cost of tuition and non-refundable fees for GED (high school equivalency) programs and job-related courses (undergraduate and postgraduate) taken from an accredited college, university, or technical school. The reimbursement will be considered only on a course by course basis. There shall be no reimbursement for review courses, exam fees, books, lab supplies, classroom materials, schedule change fees, parking fees, lodging expenses and/or other non-mandatory fees. A degree completion study will not be funded under this program.

(b) Employee Eligibility. To be eligible for reimbursement, an employee must:

(1) submit a formal request to their respective Assistant Commissioner;

(2) not have the cost of the tuition and non-refundable fees for which reimbursement is sought covered by any other financial assistance; however, if the employee is receiving only partial assistance

from other sources, Texas Department of Agriculture (TDA) will consider partial reimbursement;

(3) show a direct connection between the planned course work and current or prospective job assignments with TDA;

(4) meet any special conditions that may be required by the Assistant Commissioner or Deputy Commissioner;

(5) not be on probation (unless the subject educational course work is included in the terms of the probation);

(6) have at least all "Met Expectations" on the most recent performance appraisal on file;

(7) be actively employed at the time of the request for educational assistance; not be on leave without pay status when the class(es) begin; and, be employed with TDA for the entirety of the course(s);

(8) have been employed by TDA for at least 12 continuous months at the time the request is submitted; and

(9) must not have used this reimbursement policy more than once in a fiscal year, except with the written approval of the Deputy Commissioner.

(c) Employee Obligation.

(1) If the department pays for training that an employee receives, and during the training period the employee does not perform the employee's regular duties for three or more months as a result of the training, the employee must:

(A) work for the department following the training for at least one month for each month of the training period; or

(B) pay the department for all the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensatory leave.

(2) Before an employee receives training that will be paid for by the department and during which the employee will not be performing the employee's regular duties for three months or more, the department shall require the employee to agree in writing, before the training begins, to comply with the requirements prescribed under paragraph (1) of this subsection.

(d) Waiver of Obligation. The Deputy Commissioner may waive the requirements prescribed under subsection (c)(1) of this section and release an employee from the obligation to meet those requirements if the Deputy Commissioner finds that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(e) Employee Liability. If an employee does not provide the services required in accordance with requirements in subsection (c)(1)(A) of this section, provides those services for less than the required term, or fails to make payments required in accordance with subsection (c)(1)(B) of this section, and the employee is not released from the obligation to provide the services or to make the payments under subsection (d) of this section, the employee is liable to the state department for any costs described by subsection (c)(1)(B) of this section and for the department's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §1.701

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §1.701 is proposed under the Texas Government Code, §656.048, which provides that a state agency shall adopt rules related to training and education; and §656.046 which sets forth what a state agency's training program shall include.

The code affected by the proposal is the Texas Government Code, Chapter 656.

§1.701. Employee Training Program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER N. FOOD AND FIBERS RESEARCH GRANT PROGRAM RULES

4 TAC §1.923

The amendment to §1.923 is proposed under the Texas Agriculture Code, §42.001, which authorizes the department by rule to develop a program to award grants to assist the fibers and oilseeds industries in this state by supporting applied research related to fibers and oilseeds.

The code affected by the proposal is the Texas Agriculture Code, Chapter 42.

§1.923. Council.

(a) The Food and Fibers Research Council is made up of the following members appointed by the commissioner:

(1) - (9) (No change.)

(10) a Texas representative of the peanut industry [~~Southwest Peanut Growers Association~~];

(11) - (12) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dolores Alvarado Hibbs
General Counsel
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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.2

The Texas Department of Agriculture (the department) proposes to amend §19.2, subsections (d) and (f), concerning General Quarantine Provisions. The amendments are proposed to conform to the Texas Agriculture Code §71.051, which stipulates that nursery products or floral items be accompanied by an inspection certificate. The amendment to §19.2(d) is necessary to clarify that a nursery product or floral item must have an inspection certificate for the shipment of nursery-floral plant material originating outside the state, unless other plant material is covered under specific quarantines in this chapter. The amendment to §19.2(f) is proposed to correct the spelling of the botanical name for cogongrass.

Dr. Awinash Bhatkar, coordinator for plant quality programs, has determined that for the first five years the proposed amendments are in effect there will be no fiscal implications for state or local government.

Dr. Bhatkar has also determined that for the first five years the proposed amendments are in effect the public benefit of enforcing or administering the amended section will be the prevention of the introduction of pests into the state. No economic impact is expected to microbusiness, small business or individuals required to comply with the proposed amendments.

Comments on the proposal must be submitted within 30 days following the publication of the proposal in the *Texas Register*. Comments may be submitted to Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendments to §19.2 are proposed under Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.2. Inspection Certificates.

(a) - (c) (No change.)

(d) Subject to the provisions of this chapter, all nursery or floral shipments of plant material originating outside of the state must be accompanied by a phytosanitary certificate of inspection from the origin state's department of agriculture stating that the plants are free of insect pests and plant diseases, or any other phytosanitary document applicable to the commodity. Certification requirements for agricultural commodities and other quarantined articles are provided in specific Texas quarantines.

(e) (No change.)

(f) A phytosanitary certificate or a permit may be issued by an inspector for intrastate and interstate shipments of conifer and hardwood seedlings to verify that they are free of pests and diseases, including cogongrass, *Imperata cylindrica* [~~*Imperata cylindrical*~~]; tropical soda apple, *Solanum viarum*; and sudden oak death, *Phytopthora ramorum*. To ensure pest and disease-free plant material, the preferred method of treatment is fumigation using methyl bromide in seedling plant beds prior to seeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801942
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES
SUBCHAPTER A. LICENSING PROVISIONS
DIVISION 2. OTHER LICENSES

16 TAC §311.51

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Racing Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Racing Commission (Commission) proposes the repeal of §311.51, concerning Interim License to Conduct Race Meetings. Section 311.51 relates to a licensing category for interim licenses to conduct pari-mutuel race meetings. The Commission considers that the rule as adopted exceeds the statutory authority of the Commission under both Article 5 and Article 6 of the Texas Racing Act and should therefore be repealed.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Ms. King has also determined that for each year of the first five years the repeal is in effect the anticipated public benefit will be the elimination of a rule that exceeds the statutory authority of the Commission.

Since the rule proposed for repeal exceeds the statutory authority of the Commission to adopt, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed repeal.

All comments or questions regarding the proposed repeal may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The repeal is proposed under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

The repeal implements Texas Civil Statutes, Article 179e.

§311.51. Interim License to Conduct Race Meetings.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801958
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1054

The Texas Education Agency (TEA) proposes new §102.1054, concerning the Intensive Summer Pilot Program. The proposed new rule would implement the requirements of the Texas Education Code (TEC), §29.098, as added by House Bill (HB) 2237, 80th Texas Legislature, 2007, which requires the commissioner of education to establish by rule procedures for the awarding of grants for intensive summer programs.

HB 2237, 80th Texas Legislature, 2007, added the TEC, §29.098, requiring the commissioners of education and higher education to establish by rule a pilot program to award grants to participating campuses to provide intensive academic instruction during the summer to students identified as being at risk of dropping out of school or college. The commissioner of higher education is responsible for establishing rules to implement a program administered by institutions of higher education to provide intensive academic instruction to facilitate a student's transition from high school to a postsecondary institution. The commissioner of education is responsible to establish rules to implement programs administered by school districts to promote high school completion and college readiness through intensive academic instruction in: (1) English language arts, mathematics, and science, and (2) reading and mathematics in Grades 6-8. A school district program supported by the Intensive Summer Pilot Program grant must provide at least four weeks of rigorous instruction and be designed and implemented in partnership with an institution of higher education.

In accordance with the TEC, §29.098, proposed new 19 TAC Chapter 102, Educational Programs, Subchapter EE, Commissioner's Rules Concerning Pilot Programs, §102.1054, Intensive Summer Pilot Program, would establish and address provisions for: (1) applicable definitions, (2) eligibility criteria and application requirements, (3) notification of a grant award, (4) program funding and use of funds, (5) conditions of program operation, (6) program evaluation, and (7) revocation and sanctions.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the new section is in effect there will be no additional fiscal implications for state government as a result of enforcing or administering the new section. The proposal would establish in rule procedures for implementation of the Intensive Summer Pilot Program. There will be fiscal implications for local government. The proposed rule action would increase revenue to eligible local school districts by awarding selected school districts with financial grants to establish intensive summer programs. A grant awarded under this pilot program may not exceed $750 for each participating student and must be matched by not less than $250 for each participating student in other federal, state, or local funds, including private donations. School districts participating are encouraged, but not required, to use funds allocated as High School Allotment funds, as designated under the TEC, §42.2516(b)(3), for the purpose of matching funds. The amount that districts will be required to match will be based on the number of students the successful applicants propose to serve. If awarded the maximum allowable grant of $150,000, the maximum possible match expenditure for a participating district would be $50,000.

Ms. Knaggs has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section is that students will be better prepared for academic success, high school completion, and college readiness. School districts and campuses will benefit by reducing their dropout rates and increasing graduation rates. Students will benefit from intensive instruction in the core areas to increase their knowledge and skills and by being better prepared for success in high school and college. Additionally, the public will benefit from increased collaboration among middle schools, high schools, and institutions of higher education. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 25, 2008, and ends May 25, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 25, 2008.

The new section is proposed under the Texas Education Code, §29.098, as added by House Bill 2237, 80th Texas Legislature, 2007, which authorizes the commissioners of education and higher education to establish by rule a pilot program to award grants to participating campuses to provide intensive academic instruction during the summer to students identified as being at risk of dropping out of school or college. The commissioner of education is responsible to establish rules to implement programs administered by school districts to promote high school completion and college readiness through intensive academic instruction in: (1) English language arts, mathematics, and science, and (2) reading and mathematics in Grades 6-8.

The new section implements the Texas Education Code, §29.098.

§102.1054. Intensive Summer Pilot Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Intensive Summer Pilot Program--A pilot program established and implemented by the Texas Education Agency (TEA) in accordance with the Texas Education Code (TEC), 29.098. The pilot program is to provide eligible school districts with financial grants to establish programs in which school districts provide intensive academic instruction during the summer to students identified as being at risk of dropping out of school. Each district awarded funds under this pilot program shall design, establish, and operate an intensive summer program in partnership with an institution of higher education and must provide intensive academic instruction in English language arts, mathematics, and science in Grades 9-12 and in reading and mathematics in Grades 6-8.

(2) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(3) Shared services arrangement (SSA)--A shared services arrangement is an agreement between two or more school districts and/or education service centers that provides services for entities involved.

(b) Eligibility.

(1) In accordance with the TEC, §39.358, a school district is eligible to apply for funding under the Intensive Summer Pilot Program if the school district exhibited during each of the three preceding school years characteristics that strongly correlate with high dropout rates.

(2) Eligibility for participation in the Intensive Summer Pilot Program will be determined annually by the commissioner of education based on the latest available data and research and in accordance with the TEC, §29.098, and eligibility criteria outlined in the TEC, §39.358.

(3) An eligible school district may enter into an SSA with other eligible school districts in order to establish an Intensive Summer Pilot Program that serves students from school districts identified in the SSA.

(4) An eligible school district which submits a single grant application on behalf of itself and several other school districts participating in an SSA agrees to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(c) Application.

(1) An eligible school district must apply through the request for application (RFA) process to participate in the Intensive Summer Pilot Program.

(2) Eligible applicants must meet all deadlines, requirements, and guidelines outlined in the RFA.

(3) An eligible school district that applies to participate in the Intensive Summer Pilot Program must describe in its application how grant funds, in-kind contributions, and donations (including matching funds) will be allocated.

(4) An eligible school district applying as the fiscal agent for an SSA must complete and submit the required SSA form as part of the grant application.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the Intensive Summer Pilot Program.

(e) Program funding and use of funds.

(1) In accordance with the TEC, §29.098, programs will be funded on a per-student participant amount not to exceed $750 per student. Grant awards must be matched by not less than $250 for each participating student in other federal, state, or local funds, including donations.

(2) In accordance with the TEC, §29.098, the entire amount of a grant awarded under the Intensive Summer Pilot Program must fund the program as described in the RFA, including the description of how grant funds, in-kind contributions, and donations will be allocated. In-kind contributions may include facilities use, support services, transportation, and volunteers. Donations may include the minimum district matching contribution of not less than $250 per participating student in other federal, state, or local funds, including private donations. The district matching requirement may be met with matching funds and/or in-kind contributions.

(3) A school district participating in the Intensive Summer Pilot Program may use grant funds for other necessary costs such as implementing the optional allowable activities outlined in the program requirements section of the RFA and in the guidelines related to specific costs appendix to the RFA.

(f) Conditions of pilot program operation. Each school district operating an approved Intensive Summer Pilot Program:

(1) must operate the pilot program in accordance with the TEC, §29.098, and the requirements outlined in the RFA; and

(2) may include additional classes and activities, as outlined in the RFA, to supplement the pilot program's instructional core curriculum of mathematics, science, English language arts, and reading. Additional optional activities must be aligned with the program goals and requirements provided in the RFA.

(g) Program evaluation. Each school district operating an approved Intensive Summer Pilot Program must comply with evaluation procedures established by the commissioner as detailed in the RFA.

(h) Revocation.

(1) The commissioner may revoke participation in the Intensive Summer Pilot Program based on any of the following factors:

(A) noncompliance with requirements and assurances outlined in the RFA or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the RFA; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the pilot program.

(2) A decision by the commissioner to revoke authorization of a grant award is final and may not be appealed.

(i) Sanctions. The commissioner may audit the use of grant funds and impose sanctions on a school district for failure to comply with this section as authorized by the TEC, Chapter 39, as determined by the commissioner.

(j) Recovery of funds. As part of the sanctions described in subsection (i) of this section, the commissioner may recover funds against any state provided funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801954
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 475-1497

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19 TAC §102.1055

The Texas Education Agency (TEA) proposes new §102.1055, concerning the Collaborative Dropout Reduction Pilot Program. The proposed new rule would implement the requirements of the Texas Education Code (TEC), §29.096, as added by House Bill (HB) 2237, 80th Texas Legislature, 2007, which requires the commissioner of education to adopt rules to administer the collaborative dropout reduction pilot program.

HB 2237, 80th Texas Legislature, 2007, added the TEC, §29.096, establishing the Collaborative Dropout Reduction Pilot Program for students who are at risk of dropping out of school. The commissioner of education is to establish grant application criteria for school districts and open-enrollment charter schools to collaborate with various entities to coordinate services and programs among those entities. The commissioner is also required to establish standards for local collaborative agreements.

In accordance with the TEC, §29.096, the proposed new 19 TAC Chapter 102, Educational Programs, Subchapter EE, Commissioner's Rules Concerning Pilot Programs, §102.1055, Collaborative Dropout Reduction Pilot Program, would establish and address provisions relating to: (1) applicable definitions; (2) application requirements for a school district to receive funding on behalf of an eligible campus for the pilot grant program, including eligibility criteria; (3) notification of a grant award; (4) local collaborative agreement requirements; (5) use of funds; (6) conditions of program operation; (7) program evaluation; and (8) revocation and sanctions.

The proposed new section would create a process through which school districts or open-enrollment charters may obtain a grant to implement a local collaborative dropout program. Approved participants in collaborative dropout reduction pilot programs are required to adhere to all procedural, reporting, and evaluation requirements. School districts would be required to maintain supporting documentation relating to local collaborative agreements.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the new section is in effect there will be no additional fiscal implications for state government as a result of enforcing or administering the new section. The proposal would establish in rule procedures for implementation of the Collaborative Dropout Reduction Pilot Program. The TEC, §29.096(b), specifies that funds allocated for the grant program shall not exceed $4 million per year for fiscal years 2008-2009. There will be fiscal implications for local government. The proposed rule action would increase revenue to eligible local school districts by awarding selected school districts with financial grants to establish collaborative dropout reduction programs. Each eligible school district selected to participate could be awarded up to $250,000 in grant funds beginning with the 2008-2009 school year (fiscal year 2009). However, the grant requires a local match (cash or in-kind) of 10% in the first year. The total cost to local school districts in fiscal year 2009 would be $400,000, which is 10% of the $4 million grant.

Ms. Knaggs has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be the establishment of collaborative dropout reduction pilot programs in school districts and open-enrollment charter schools across the state in an effort to reduce the number of students dropping out of school. The pilot program would provide a number of students with internship and employment opportunities as well as learning environments that meet their particular needs. The public would benefit from local collaborations between schools, businesses, community leaders, parents, school staff, and students through successful programs implemented to reduce dropout rates. The public will further benefit from the implementation of models that may inform the development of policy and programs in the future. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 25, 2008, and ends May 25, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 25, 2008.

The new section is proposed under the Texas Education Code, §29.096, which authorizes the commissioner of education to adopt rules as necessary to administer the Collaborative Dropout Reduction Pilot Program.

The new section implements the Texas Education Code, §29.096.

§102.1055. Collaborative Dropout Reduction Pilot Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Collaborative Dropout Reduction Pilot Program--A pilot program established and implemented by the Texas Education Agency (TEA) in accordance with the Texas Education Code (TEC), §29.096. The pilot program is to provide eligible school districts with financial grants to implement a local collaborative dropout reduction program. Only an eligible school district may apply for funding under this program and must serve as the fiscal agent for the pilot program. A school district awarded a grant under this pilot program shall coordinate the delivery of research-based intervention services and programs among local entities such as local businesses, local government or law enforcement agencies, nonprofit organizations, faith-based organizations, and institutions of higher education to comprehensively reduce the dropout rate in the community and to increase the job skills, employment opportunities, and continuing education opportunities of students who might otherwise have dropped out of school.

(2) Collaborative partner--A collaborative partner is a public or private entity which participates in a Collaborative Dropout Reduction Pilot Program and contributes to collaborative efforts through the provision of funds, services, personnel, and/or in other ways deemed appropriate to assist in reaching program goals. Collaborative partners may include, but are not limited to, entities such as school districts, local businesses, other local governments or law enforcement agencies, nonprofit organizations, faith-based organizations, and institutions of higher education.

(3) Lead educational staff member--A person working as part of the Collaborative Dropout Reduction Pilot Program that is responsible for program coordination, outreach, recruitment, and other activities necessary to implement and manage the program. The lead educational staff member may be a full- or part-time paid staff person, or the position may be filled by a volunteer. The lead educational staff member may be an employee of the district awarded a grant under this program, or an employee/volunteer from one of the partners in the local collaborative.

(4) Outreach--Activities designed to raise awareness and provide information, solicit participation and/or contributions, recruit students and other stakeholders, and involve the local community in collaborative initiatives.

(5) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(6) Shared services arrangement (SSA)--A shared services arrangement is an agreement between two or more school districts and/or education service centers that provides services for entities involved.

(b) Eligibility.

(1) In accordance with the TEC, §39.358, a school district is eligible to apply for funding under the Collaborative Dropout Reduction Pilot Program if the district exhibited during each of the three preceding school years characteristics that strongly correlate with high dropout rates.

(2) Eligibility for participation in the Collaborative Dropout Reduction Pilot Program will be determined annually by the commissioner of education based on the latest available data and research and in accordance with the TEC, §29.096, and eligibility criteria outlined in the TEC, §39.358.

(3) An eligible school district may enter into an SSA in order to apply for grant funds. An SSA is limited to no more than ten eligible districts. A school district may submit or be a member of an SSA for no more than one Collaborative Dropout Reduction Pilot Program grant application. A collaborative partner, other than a school district, may be included in more than one SSA.

(4) An education service center (ESC) established under the TEC, §8.001, is not eligible to apply as a fiscal agent for an SSA but may be a collaborative partner with eligible districts.

(5) An eligible school district which submits a single grant application on behalf of itself and several other school districts participating in an SSA agrees to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(c) Application.

(1) An eligible school district must apply through the request for application (RFA) process to participate in the Collaborative Dropout Reduction Pilot Program.

(2) Eligible applicants must meet all deadlines, requirements, and guidelines outlined in the RFA.

(3) An eligible school districts that applies to participate in the pilot program must identify and include in its application:

(A) the source(s) of matching funds from the participating collaborating partners as specified in the grant application; and

(B) a description of how the program will be sustained beyond the life of the grant funding.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for participation in the Collaborative Dropout Reduction Pilot Program.

(e) Local collaborative agreement.

(1) Each eligible school district selected to participate must submit a copy of a local collaborative agreement, such as a memorandum of understanding, to the TEA prior to implementation of the pilot program.

(2) The local collaborative agreement must include the minimum standards specified in the TEC, §29.096(e), and a detailed description of the following:

(A) the source(s) of matching funds;

(B) how matching funds will be used by the pilot program;

(C) a description of the services, activities, commitments, assurances, responsibilities, obligations, and understandings of each collaborative partner; and

(D) decision-making procedures between the school district and collaborative partner(s).

(f) Use of funds.

(1) In accordance with the TEC, §29.096, the entire amount of a grant awarded under the Collaborative Dropout Reduction Pilot Program must fund programs in adherence with guidelines and requirements provided in the RFA.

(2) A school district participating in the Collaborative Dropout Reduction Pilot Program may allocate no more than 15% of total project funds, which include the state grant award and local match, for administrative expenses. Of the amount used for administrative costs, no more than 5.0% may be state grant award funds. Up to an additional 10% may be matching funds, but in no case can administrative costs exceed 15% of the total project funds. A school district may use in-kind contributions for administrative expenses. In-kind contributions may include the use of facilities, office space, and equipment and the provision of administrative services and supplies.

(3) Allowable costs include, but are not limited to:

(A) costs associated with implementing the local Collaborative Dropout Reduction Program in the following four service areas: workforce skill development, academic support, attendance improvement, and student and family support services; and

(B) costs associated with a designated lead educational staff member to conduct outreach activities designed to identify and involve eligible students as well as public and private entities to participate in the program.

(g) Conditions of pilot program operation. Each school district operating an approved Collaborative Dropout Reduction Pilot Program must operate the program in accordance with the TEC, §29.096, and the requirements outlined in the RFA and must:

(1) coordinate the delivery of research-based intervention services and programs among local entities such as local businesses, local government or law enforcement agencies, nonprofit organizations, faith-based organizations, and institutions of higher education to comprehensively reduce the dropout rate in the community and to increase the job skills, employment opportunities, and continuing education opportunities of students who might otherwise have dropped out of school;

(2) serve students in Grades 9, 10, 11, and 12 or any combination thereof;

(3) comply with all deadlines, requirements, and assurances established in the RFA;

(4) provide services in the areas of workforce development, academic support, student and family support services, and attendance improvement;

(5) serve a minimum of students (as specified in the grant application) per grant period; and

(6) designate governance responsibilities to a school district official for the purposes of managing the implementation and operation of the pilot program.

(h) Program evaluation. Each school district operating an approved Collaborative Dropout Reduction Pilot Program must comply with evaluation procedures established by the commissioner as detailed in the RFA.

(i) Revocation.

(1) The commissioner may revoke participation in a Collaborative Dropout Reduction Pilot Program and require the school district that received an award to repay some or all of the grant award based on any of the following factors:

(A) noncompliance with requirements and assurances outlined in the RFA and/or the provisions of this section and the TEC, §29.096;

(B) failure to meet performance measures specified in the RFA; or

(C) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the pilot program.

(2) A decision by the commissioner to revoke authorization of a grant award is final and may not be appealed.

(j) Sanctions. The commissioner may audit the use of grant funds and impose sanctions on a school district for failure to comply with this section as authorized by the TEC, Chapter 39, as determined by the commissioner.

(k) Recovery of funds. As part of the sanctions described in subsection (j) of this section, the commissioner may recover grant funds against any state provided funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801955
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER CC. STANDARDS FOR ACCELERATION-OF-LIFE-INSURANCE BENEFITS FOR INDIVIDUAL AND GROUP POLICIES AND RIDERS

28 TAC §§3.4302, 3.4303, 3.4307 - 3.4311, 3.4313

The Texas Department of Insurance proposes amendments to §§3.4302, 3.4303, 3.4307 - 3.4311, and 3.4313, relating to the standards for acceleration-of-life-insurance benefits for individual and group policies and riders. The proposed amendments are necessary to delete obsolete statutory and internal Texas Administrative Code references and to correct minor nonsubstantive errors in the existing rules. The proposal does not make any substantive changes.

Insurance Code Article 3.50-6, which is referenced in §3.4303, was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §31(a), effective June 1, 2003. Article 3.50-6 was re-adopted as §§1111.051 - 1111.053 in the same nonsubstantive Insurance Code revision. Insurance Code Article 3.70-8, which is referenced in §3.4303, was repealed in the nonsubstantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 3.70-8 was re-adopted as §§1201.003, 1201.059, 1201.105, 1351.002, and 1451.051 in the same nonsubstantive Insurance Code revision. Insurance Code Article 3.44a, which is referenced in §3.4307 and §3.3409, was repealed in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §31(a), effective June 1, 2003. Article 3.44a was re-adopted as Chapter 1105 in the same nonsubstantive Insurance Code revision. Insurance Code Article 3.28, which is referenced in §3.4310, was repealed in the nonsubstantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 727, §18(a)(3), effective April 1, 2007. Article 3.28 was re-adopted as §§425.051 - 425.070 in the same nonsubstantive Insurance Code revision. Insurance Code Article 21.21, which is referenced in §3.4311, was repealed

in the nonsubstantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.21 was re-adopted as Chapter 541 in the same nonsubstantive Insurance Code revision. The proposal also amends in §3.4311(a) the reference to the title of Chapter 541 to correctly reflect its title as "Unfair Methods of Competition and Unfair or Deceptive Acts or Practices."

Amendments are also proposed to correct obsolete internal Texas Administrative Code references. Existing §3.4302(b)(2)(B) in the definition of the term "Long-term care illness" references home health care services "as defined and provided consistently with §3.3804(b)(13) and (14)." Amendments were adopted to §3.3804, effective January 6, 2002 (26 TexReg 10886), to move paragraphs (13) and (14) to paragraphs (15) and (16). The proposed amendment to §3.4302(b)(2)(B) deletes the obsolete references to paragraphs (13) and (14) and uses the agency's general citation style, which references Long-term care illness "as defined and provided consistently with §3.3804(b)." Existing §3.4313(a) references the definition of an "invitation to contract" as defined in 28 TAC §21.114. Amendments were adopted to §21.114, effective December 9, 2007 (32 TexReg 8830), to delete the definition of "invitation to contract" and to §21.102 to add the definition of "invitation to contract."

The proposal also makes changes to correct nonsubstantive errors in the existing rule. The title of the subchapter is amended to include hyphens in the phrase "Acceleration-of-Life-Insurance" to be consistent with the phrase as used throughout the subchapter. Existing §3.4302(b)(2)(A) in the definition of the term "Long-term care illness" references "§3.3812 of this title (relating to Policy Definition of Provider)." An amendment is proposed to the reference to the section title to correctly reflect its title as "Policy Standards for Provider." The proposal amends §3.4303(b) to include the word "the" before the phrase "Insurance Code" for consistency with agency style and makes changes to punctuation to correctly reflect the title of §3.4302 as "Acceleration-of-Life-Insurance: Scope of Benefits" in the reference to that section. The proposal amends §§3.4307, 3.4309, 3.4310, and 3.4311 to delete unnecessary commas. Existing §3.4308 does not include a reference to the complete title of §3.4306(3), and the proposal amends the reference to the §3.4306 title to correctly reflect its title as "Methods for Determining Benefits and Allowable Charges and Fees."

FISCAL NOTE. Jennifer Ahrens, Senior Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Ahrens has determined that for each year of the first five years the proposal is in effect, the anticipated public benefit will be updated statutory and rule references and correction of other nonsubstantive errors in the existing rules that will result in increased clarity and readability of the rules. The proposed amendments are nonsubstantive and do not impose any additional requirements on any individual or entity, regardless of size, required to comply with the existing sections as amended by the proposal. Therefore, there are no costs required to comply with the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposal will not have an adverse economic effect on small or micro-businesses. The proposed amendments are nonsubstantive and do not impose any additional requirements on any individual or entity, including small and micro businesses, required to comply with the existing sections as amended by the proposal. Therefore, there are no costs required to comply with the proposal for any small or micro business. In accordance with the Government Code §2006.002(c), the Department has therefore determined that a regulatory flexibility analysis is not required because the proposal will not have an adverse impact on small or micro businesses.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Because the proposed amendments do not make any substantive changes and relate only to deleting obsolete statutory and internal Texas Administrative Code references and correcting minor nonsubstantive errors, written comments on the proposal should be related only to the proposed amendments and not to any requested substantive changes to the sections. The Department will not consider comments requesting substantive changes to the sections. The Department, however, will be proposing substantive amendments to the standards for acceleration-of-life-insurance benefits for individual and group policies and riders later this year, and interested parties will have the opportunity to submit comments on proposed substantive changes at that time.

To be considered, any comments on this proposal must be submitted no later than 5:00 p.m. on May 27, 2008, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jennifer Ahrens, Senior Associate Commissioner, Life, Health and Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§1111.053, 1701.060, and 36.001. Section 1111.053 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 1111, Subchapter B, Accelerated Term Life Insurance Benefits. Section 1701.060 authorizes the Commissioner to adopt rules necessary to implement Chapter 1701, Policy Forms, including rules that establish procedures and criteria under which each type of form submitted to the department under Chapter 1701 will be reviewed and approved by the commissioner or exempted under §1701.005(b), and procedures and criteria under which particular types of forms designated by the commissioner may be given a summary review and approval, if considered appropriate by the commissioner, to expedite review and approval of those forms. Section 1701.002 specifies that Chapter 1701 is applicable to a policy, contract, or certificate of accident or health insurance, medical or surgical insurance, life or term insurance, including group life or term insurance, endowment

insurance, industrial life insurance, fraternal benefit insurance, an annuity or endowment contract, an application attached or required to be attached to the policy, contract or certificate, or a rider or endorsement to be attached to, printed on, or used in connection with the policy, contract, or certificate. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§1111.053, 1701.060, 1111.053, 1701.060, and Chapter 541.

§3.4302. Acceleration-of-Life-Insurance: Scope of Benefits.

(a) (No change.)

(b) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) (No change.)

(2) Long-term care illness--An illness or physical condition that results in the inability to perform the activities of daily living or the substantial and material duties of any occupation. Evidence of a long-term care illness includes, but is not limited to, illnesses or conditions which require:

(A) confinement in a convalescent nursing home, residential care or intermediate nursing facility, defined consistently with the provisions of §3.3812 of this title (relating to Policy Standards for [~~Definition of~~] Provider); or

(B) adult day care services, as defined and provided consistently with §3.3804(b)[~~(3) and (4)~~] of this title (relating to Definitions), and home health care services, as defined and provided consistently with §3.3804(b)[~~(13) and (14)~~] of this title.

(3) - (4) (No change.)

(c) - (f) (No change.)

§3.4303. Required Policy Definitions; Evidence of Total and Permanent Disability.

(a) (No change.)

(b) Such illness, condition, care, or confinement is evidence of total and permanent disability for purposes of meeting the standards for providing acceleration-of-life-insurance benefits set forth in the Insurance Code, §1111.052 [~~Articles 3.50-6~~] and §1201.003 [~~3.70-8~~], and §3.4302 of this title (relating to Acceleration-of-Life-Insurance: [~~Acceleration of Life Insurance;~~] Scope of Benefits).

§3.4307. Limitations on Reduction of Cash Values.

Except as otherwise authorized under the Lien Method for determining benefits under §3.4306(3) of this title (relating to Methods for Determining Benefits and Allowable Charges and Fees), if the cash values are reduced by the acceleration-of-life-insurance benefit, related charges and interest, the reduction shall not be unjust and shall not exceed an amount equal to the pro rata portion of the cash value associated with the death benefit used in providing the acceleration-of-life-insurance benefit. Future cash values shall not be less than the minimum cash values required by the Insurance Code Chapter 1105[~~, Article 3.44a~~], for the reduced future guaranteed death benefits. These minimum cash values are equal to the present value of the reduced future guaranteed benefits less the present value of future adjusted premiums, decreased by the amount of any indebtedness, including liens, under the life insurance contract. The mortality and interest used in calculating the minimum cash values will be as provided in the Insurance Code Chapter 1105[~~, Article 3.44a~~], for life insurance coverage, disregarding any acceleration-of-life-insurance benefits.

§3.4308. Pro Rata Reduction of Loan upon Acceleration of Benefits.

Unless the insurer is using the Lien Method for determining benefits under §3.4306(3) of this title (relating to Methods for Determining Benefits and Allowable Charges and Fees), if there is a loan on the life insurance contract, the insurer may deduct up to a pro rata portion of the loan from the amount of the acceleration-of-life-insurance benefit.

§3.4309. Effect of Acceleration of Benefits on Nonforfeiture Calculations.

An acceleration-of-life-insurance benefit provision or rider shall be disregarded in ascertaining nonforfeiture benefits under the Insurance Code Chapter 1105[~~, Article 3.44a~~].

§3.4310. Calculation of Reserves.

(a) Reserves for an acceleration-of-life-insurance benefit shall be based on tables of disablement, morbidity, or mortality appropriate for determining liability for the benefits provided. Such disablement or morbidity tables shall be certified as appropriate by a member of the American Academy of Actuaries and approved by the Texas Department of Insurance under the Insurance Code §425.058(k)[~~, Article 3.28, §§(3)(g)~~] and §425.069 [~~11~~]. Reserves for the death benefits or other supplementary benefits provided by a life insurance contract which includes an acceleration-of-life-insurance benefit shall be calculated disregarding such benefit, using mortality and interest rates as provided in the Insurance Code Chapter 425[~~, Article 3.28~~]. The basis of reserves for any life insurance contract which contains an acceleration-of-life-insurance benefit provision shall accompany the filing of the contract with the Texas Department of Insurance.

(b) (No change.)

§3.4311. Unfair, Discriminatory or Deceptive Practices Prohibited.

(a) Acceleration-of-life-insurance benefit provisions are subject to the Insurance Code Chapter 541[~~, Article 21.21~~] (concerning Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) and rules promulgated under Chapter 541 [~~Article 21.21~~].

(b) (No change.)

§3.4313. Notice and Disclosure Requirements for Marketing Materials.

(a) Any "invitation to contract," as defined in §21.102 [~~§21.114~~] of this title (relating to Scope [~~Rules Pertaining Specifically to Life Insurance Advertising~~]), used in the marketing, solicitation or sale of a life insurance contract containing an acceleration-of-life-insurance provision shall clearly and concisely disclose the following:

(1) - (3) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801953
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 463-6327

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 140. DISPUTE RESOLUTION--GENERAL PROVISIONS

28 TAC §§140.6 - 140.8

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes new §140.6 (relating to Subclaimant Status: Establishment, Rights, and Procedures), new §140.7 (relating to Health Care Insurer Reimbursement Under Labor Code §409.0091), and new §140.8 (relating to Procedures for Health Care Insurers to Pursue Subclaims).

The proposed sections are necessary to implement the statutory provisions of HB 724 enacted by the 80th Legislature, Regular Session, 2007. HB 724 created new Labor Code §409.0091, which authorizes "health care insurers" to seek reimbursement from a workers' compensation insurance carrier for health care paid by the health care insurer for work related, compensable injuries.

The proposed sections do not address the reimbursement provisions of certified workers' compensation health care networks. Generally, those provisions are addressed in Chapter 1305 of the Texas Insurance Code and related Department rules.

Labor Code §409.0091 specifies some procedures and requires the Commissioner of Insurance and the Commissioner of Workers' Compensation to adopt or modify rules as necessary to: (1) allow a "health care insurer" access as a subclaimant to the appropriate dispute resolution process; (2) recognize the status of a subclaimant as a party to a dispute; (3) ensure that a workers' compensation insurance carrier is not penalized for denying payment in order to get additional information; (4) specify the process by which an employee who has paid for health care services may seek reimbursement; and (5) clarify the processes required by, fulfill the purpose of, and assist the parties in the proper adjudication of subclaims under §409.0091.

Labor Code §409.009 is a general provision establishing the basic requirements for subclaim status and applies to all subclaimants. Prior to 2007, there were no distinctions among subclaimants or classes of subclaimants. House Bill 724, in 2007, created Labor Code §409.0091, which established specific rules and procedures for one class of subclaimants: Health care insurers who have claims based on data matches with the Division.

Proposed §140.6 establishes the procedures that apply to all subclaimants, including health care insurers. Proposed §140.6(a) specifies that proposed §140.6 applies to a subclaim under Labor Code §409.009. Proposed §140.6(b) defines the term "health care insurer." Proposed §140.6(c) specifies that a subclaimant is a party to a claim concerning workers' compensation benefits. Proposed §140.6(d) specifies a subclaimant's rights in relation to the employee and the circumstances in which a subclaimant may pursue a claim for reimbursement of a medical benefit without the participation of the employee. Proposed §140.6(e) provides that a health care insurer must pursue a claim for reimbursement of medical benefits and medical dispute resolution under proposed §140.8. All other subclaimants must pursue a claim for reimbursement of medical benefits and medical dispute resolution under Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits-Guidelines for Medical Services, Charges, and Payments). Proposed §140.6(f) provides for a subclaimant to pursue a contested case hearing under Chapters 140-143 of this title (relating to Dispute Resolution).

Proposed §140.7 establishes provisions that are specific to health care insurers when seeking reimbursement from a workers' compensation insurance carrier for health care paid by the health care insurer for work related, compensable injuries. Proposed §140.7(a) defines the term "health care insurer." Proposed §140.7(b) specifies that this section only applies to claims by a health care insurer based on information received under Labor Code §402.084(c-3). Proposed §140.7(c) provides for the reimbursement of health care insurers for medical benefits provided to or paid on behalf of an employee with a compensable workers' compensation claim in accordance with Labor Code §409.0091, and proposed §140.7, and §140.8. Proposed §140.7(d) specifies that it is not a defense to a subclaim by a health care insurer under Labor Code §409.0091 that: (1) the health care insurer has not sought reimbursement from a health care provider or the health care insurer's insured; (2) the health care insurer or the health care provider did not request preauthorization under §134.600 (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) or Labor Code §413.014; or, (3) the health care provider did not bill the workers' compensation insurance carrier, as provided by §408.027, before the 95th day after the date the health care for which the health care insurer paid was provided.

Proposed §140.8 establishes the process for health care insurers seeking reimbursement from a workers' compensation insurance carrier for health care paid by the health care insurer for work related, compensable injuries when pursuing a claim for reimbursement of medical benefits under Labor Code §409.009 or §409.0091. Proposed §140.8(a) defines the term "health care insurer." Proposed §140.8(b)(1) sets forth the procedure for filing a reimbursement request with the workers' compensation carrier. The form used for the reimbursement request must be the form prescribed by the Division and must contain all the required elements listed on the form. Proposed §140.8(b)(1) requires the health care insurer to provide a notice of the reimbursement request to the employee and the health care provider that performed the services that are the subject of the reimbursement request. Proposed §140.8(c) sets forth the deadlines for responding to the request for reimbursement and establishes criteria for the workers' compensation carrier when requesting additional information from the health care insurer for processing the reimbursement request. Any request by the workers' compensation carrier for additional information shall be in writing, be relevant and necessary for the resolution of the request, and be for information that is contained in or in the process of being incorporated into the employee's medical billing record maintained by the health care insurer. A workers' compensation carrier shall not be held responsible or otherwise penalized for the costs of obtaining additional information if the workers' compensation carrier denies payment in order to move to dispute resolution to obtain additional information to process the request. Proposed §140.8(c) also establishes that it is the health care insurer's obligation to furnish its agents with any information necessary for the resolution of a reimbursement request. The Division considers any medical billing information or documentation possessed by the health care insurer or one of its agents to be simultaneously possessed by the health care insurer and all of its agents.

Proposed §140.8(d) provides that a workers' compensation carrier must either accept, reduce, or deny a reimbursement request and provides the procedures to follow with each response. Proposed §140.8(e) requires a health care provider to refund to the employee all payments received from the employee for care relating to the claim within 45 days of receipt of the notice that the claim is compensable. Proposed §140.8(f) sets forth the procedures for filing notice of subclaimant status if the reimbursement request is not accepted in its entirety. Proposed §140.8(g) sets forth the procedures for filing a request for dispute resolution, based on the reasons for the denial of the reimbursement request. Proposed §140.8(h) sets forth the procedures when multiple entities seek reimbursement for the same services.

Bob Lang, Deputy Commissioner of Hearings, Division of Workers' Compensation, has determined that for each year of the first five years the proposed rules will be in effect there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed rules. The cost of enforcing or administering these proposed rules is a result of legislative amendments to Labor Code §409.009 and §409.0091. These proposed rules do not impose any additional costs independently of the legislation. The Division may experience an increase in the number of dispute resolution proceedings. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Lang has also determined that for each year of the first five years the proposed rules will be in effect the public benefit anticipated as a result of enforcing the rules will be the clarification of procedures for a subclaimant to request reimbursement from a workers' compensation carrier pursuant to the Labor Code and procedures for resolving disputes that arise from a request for reimbursement. Also, employees will be refunded any money paid out of pocket (e.g., deductibles, co-pays) for health care services paid by the employee that should have been paid by a workers' compensation carrier.

There will be economic costs to health care insurers who choose to seek reimbursement. Proposed §140.8(b)(2) requires the health care insurer to give notice of the reimbursement request to the employee and the health care provider that performed the services that are subject to the reimbursement request.

There will be economic costs to workers' compensation carriers. Workers' compensation carriers will experience an increase in associated costs for evaluating and responding to claims from group health insurers for reimbursement. The Division anticipates that when the reimbursement request form is used as required by the proposed rule, the costs associated with evaluating and responding to claims will be consistent with the costs currently associated with processing a medical bill from health care providers. These costs will vary by individual workers' compensation carrier, based on their own operations and business practices.

Workers' compensation carriers will also experience costs associated with the notification requirements established by the proposed rules. Proposed §140.8(d)(1)(E) requires the workers' compensation carrier to give notice of its response to the reimbursement request to the employee and the health care provider that performed the services that are the subject of the reimbursement request. Section 140.8(d)(3) also requires the workers' compensation carrier to provide an explanation of benefits to the health care insurer and all health care provider(s) associated with the reimbursement request. The probable costs to workers' compensation carriers to comply with these requirements in the proposed rules will result from the printing and mailing of the notices specified in proposed §140.8(d)(1)(E) and mailing of the explanation of benefits in proposed §140.8(d)(3).

The Division has developed estimated costs for compliance with the proposed rules based on costs that have been previously used by the Division for similar requirements. In estimating the costs for health care insurers and workers' compensation carriers in complying with their respective duties under proposed §§140.8(b)(2), 140.8(d)(1)(E), and 140.8(d)(3), the Division assumes there will be: (i) a single printed page; (ii) a mailing envelope; and (iii) required mailing postage. The estimates used in the Division's analysis assume that a printed page costs $0.05, an envelope costs $0.05, and postage for one to three pages of paper is currently $0.41, but will increase to $.042 on May 12, 2008. Individual health care insurers and workers' compensation carriers that identify, based on their own operations, differing costs for those cost components will be able to calculate their particular costs using the Division's cost analysis approach.

Health care providers will experience costs associated with proposed §140.8(e) which requires health care providers to refund to the employee any amounts paid to the health care provider by the employee for the services that were reimbursed by the workers' compensation carrier. The costs a health care provider will experience as a result of this provision will be equal to the amount paid to the provider by the employee. This amount will vary based on the required enrollee deductibles or copays associated with the employee's health insurance plan. The administrative costs a health care provider will experience as a result of determining the refund amount and processing the refund will be consistent with the costs already being experienced by the health care provider when processing refunds to any of the health care provider's patients. These administrative costs will vary by individual health care provider, based on their own operations and business practices. The proposed rule will only be applicable to health care providers that are ultimately deemed to have provided services to workers pursuant to the Texas workers' compensation system. Thus, this proposed rule will have no adverse economic effect on small business health care providers that do not provide services to workers pursuant to the Texas workers' compensation system.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on approximately 27,163 small or micro-businesses who may be required to comply with the proposed rules. This number includes approximately 27,000 health care providers, and 163 small business carriers. The number of small business health care providers comes from Texas Workforce Commission data for the second quarter of 2007. The number of small business carriers comes from current Division records.

Proposed §140.8(e) requires health care providers to refund to the employee any payments made by the employee to the health care provider for that care. The health care provider will incur costs associated with refunding the employee any payments made by the employee. If the amount reimbursed to the health care insurer by the workers' compensation carrier is less than the amount set by the applicable Division fee guideline, the health care provider may request reimbursement from the workers' compensation insurance carrier pursuant to §140.8(d)(1)(F) to offset any amounts refunded to the employee. The proposed rule will only be applicable to health care providers that are ultimately deemed to have provided services to workers pursuant to the Texas workers' compensation system. Thus, this

proposed rule will have no adverse economic effect on small business health care providers that do not provide services to workers pursuant to the Texas workers' compensation system.

The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. The total cost of compliance to large businesses and small or micro-businesses is not dependent upon the size of the business, but rather is dependent upon the specific medical bills to be reimbursed and the businesses practices of the particular entity.

The probable cost to small or micro-business insurers required to comply with the proposed rules will result from the printing and mailing of the notices specified in the proposal. The cost of compliance with the proposal will not vary for each required notice between large business and small or micro-businesses, and the Division's cost analysis and resulting estimated costs for workers' compensation carriers in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. The total cost to large business and small or micro-business insurers for printing and mailing notices required by this proposal is not dependent upon the size of the insurer, but rather is dependent upon the individual insurer's particular costs for each cost component, the number of transactions requiring notices, the number of pages used in printing the notices, and whether the notices are printed one-sided or two-sided.

REGULATORY FLEXIBILITY ANALYSIS

Labor Code §409.0091 requires that the entire payment stream for medical treatment under health insurance be replaced with the payment stream for medical treatment under workers' compensation for the class of cases covered by the statute.

The statute requires workers' compensation carriers to adjust claims presented to them by health care insurers and to provide certain notices. The proposed rules also require workers' compensation carriers to provide additional notices to health care providers and employees.

The rule proposal requires health care insurers to provide notice to health care providers and employees who are the subject of the reimbursement request.

The statute provides for the employee to get reimbursed for health care services the employee paid for personally. The rule proposal provides for the health care provider to reimburse the employee for payments received for medical services.

In considering which party, the workers' compensation carrier, the health care insurer, or the health care provider, was to reimburse the employee and which parties were to provide the necessary notices, the other regulatory methods considered by the Division to accomplish the objectives of the proposal and to minimize any adverse impact on the small and micro businesses affected included (i) not adopting the proposed regulation, (ii) imposing the requirements on a party other than the one chosen, and (iii) exempting small and micro businesses from compliance with these provisions.

Not adopting the proposed regulation. The Division rejected this approach because it would not accomplish the objective of the statute or the rule proposal and would not be consistent with the intent of the Legislature. The primary objectives of the proposed rule were to comply with the recently enacted requirements of Labor Code §409.0091(o) which provides that the Commissioner of Workers' Compensation and the Commissioner of Insurance shall amend or adopt rules to specify the process by which an employee who has paid for health care services described by §408.027(d) may seek reimbursement and to clarify the billing and reimbursement processes for health care insurers.

Imposing the requirements on a party other than the one chosen. The Division rejected this approach because the requirements were either imposed by statute or were imposed on the most logical party to do them. The statute requires the workers' compensation carriers to process the reimbursement requests. The health care insurer is the most logical party to provide notification of the reimbursement request to the health care providers and employees that are the subject of the reimbursement request because the health care insurer knows who the provider(s) and employee are at the time the health care insurer submits the reimbursement request. The health care provider is the most logical party to reimburse the employee for any money paid out of pocket because the health care provider directly received the payment and is in the best position to know the amount the employee actually paid. In addition, workers' compensation carriers are the most logical party to provide health care providers and employees with copies of the response to the reimbursement request and copies of the explanation of benefits.

Exempting the small or micro business from compliance altogether. The Division rejected this approach because the statute requires compliance from all organizations regardless of size and does not authorize the Division to exempt anyone from compliance.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 28, 2008. Comments may be submitted via the Internet through the Division's Internet website at http://www.tdi.state.tx.us/rules/proposed rules/toc.html or by mailing or delivering your comments to Victoria Ortega, Legal Services, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The Commissioners will consider the proposed new sections in a public hearing at 1:30 p.m. on May 28, 2008, in Room 1.107A, 7551 Metro Center Drive, Austin, Texas 78744. Written and oral comments presented at the hearing will be considered.

These proposed rules are proposed under the Labor Code §§402.00111, 402.061, 402.084, 408.027, 409.009, 409.0091, 410.025, 413.031, 413.0311, 413.032 and 413.053. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner of Workers' Compensation the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act. Section 402.084 provides for the release of employee claim information to specified persons. Section 408.027 provides for the payment of claims of a health care provider. Section 409.009 sets forth the qualifications to file as a subclaimant. Section 409.0091 authorizes the Commissioner of Insurance and the Commissioner of Workers' Compensation to adopt rules

to clarify the processes required by, fulfill the purpose of, and assist the parties in the proper adjudication of subclaims under §409.0091. Section 410.025 authorizes the Commissioner of Workers' Compensation to establish the time frame in which a benefit review conference must be scheduled. Section 413.031 provides for medical dispute resolution and authorizes the Commissioner of Workers' Compensation to adopt rules to notify claimants of their rights and the process for disputes in which an employee has paid for medical services and seeks reimbursement. Section 413.0311 provides for the review of certain medical disputes. Section 413.032 sets forth the elements of a decision of an independent review organization. Section 413.053 authorizes the Commissioner of Workers' Compensation to establish form and content standards of reporting and billing. The following statutes are affected by this proposal: Labor Code §§409.009, 409.0091, 402.084, 413.014 and 408.027; Labor Code Chapters 133, 134, 140, 141, 142, and 143, and Labor Code Title 5.

§140.6. Subclaimant Status: Establishment, Rights, and Procedures.

(a) Applicability. This section is applicable to a subclaim pursued under Labor Code §409.009, including a subclaim pursued by a health care insurer.

(b) Health care insurer. "Health care insurer" means an insurance carrier, as defined in Labor Code §402.084(c-1), and an authorized representative of an insurance carrier.

(c) Party status. A subclaimant is a party to a claim concerning workers' compensation benefits.

(d) Rights in Relation to Employee.

(1) A subclaimant may file and pursue a claim for reimbursement of a medical benefit that has been provided to an injured employee, and is entitled to appropriate dispute resolution in accordance with the Texas Workers' Compensation Act (Act) and Division of Workers' Compensation (Division) rules.

(2) A subclaimant may pursue a claim for reimbursement of a medical benefit that has been provided to an injured employee and participate in the dispute resolution process without the participation of the employee if:

(A) there is no prior written agreement between the employee and the workers' compensation carrier or no final decision by the Division on the issue in dispute;

(B) the workers' compensation carrier has denied the entitlement to benefits under the Act and Division rules; and

(C) the employee is not pursuing dispute resolution to establish the employee's entitlement to benefits with reasonable diligence,

(3) At a contested case hearing without the participation of the employee, the subclaimant must show, in addition to other facts:

(A) it has contacted the employee and the employee is not pursuing the dispute with reasonable diligence, or

(B) it has been unable to contact the employee through the exercise of reasonable diligence.

(e) Claims for Reimbursement of Medical Benefits.

(1) Subclaimants, except for health care insurers, must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits-Guidelines for Medical Services, Charges and Payments).

(2) A health care insurer subclaimant must pursue a claim for reimbursement of medical benefits in accordance with the provisions of §140.8 of this title (relating to Procedures for Health Care Insurers to Pursue Subclaims). If medical dispute resolution is necessary, a health care insurer subclaimant must pursue medical dispute resolution in accordance with the provisions of §140.8 of this title.

(f) Contested Case Hearing. A subclaimant may pursue a contested case hearing under the provisions of Chapters 140 - 143 of this title (relating to Dispute Resolution).

§140.7. Health Care Insurer Reimbursement under Labor Code §409.0091.

(a) Health Care Insurer. "Health care insurer" means an insurance carrier, as defined in Labor Code §402.084(c-1), and an authorized representative of an insurance carrier.

(b) This section applies only to claims by a health care insurer based on information received under Labor Code §402.084(c-3).

(c) Reimbursement of Health Care Insurers. A health care insurer may be reimbursed for medical benefits provided to or paid on behalf of an employee with a compensable workers' compensation claim in accordance with Labor Code §409.0091, the procedures of §140.8 of this title (relating to Procedures for Health Care Insurers to Pursue Subclaims), and this section.

(d) A workers' compensation carrier shall not deny a reimbursement request under Labor Code §409.0091 from a health care insurer because:

(1) the health care insurer has not sought reimbursement from the health care provider or the health care insurer's insured;

(2) the health care insurer or the health care provider did not request preauthorization under §134.600 (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) or Labor Code §413.014; or

(3) the health care provider did not bill the workers' compensation carrier, as provided by Labor Code §408.027, before the 95th day after the date the health care for which the health care insurer paid was provided.

§140.8 Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits.

(a) Health Care Insurer. "Health care insurer" means an insurance carrier, as defined in Labor Code §402.084(c-1), and an authorized representative of an insurance carrier.

(b) Request to Workers' Compensation Carrier. A health care insurer seeking reimbursement must first file a reimbursement request with the workers' compensation carrier.

(1) Form. The request must be in the form/format and manner prescribed by the Division of Workers' Compensation (Division) and must contain all the required elements listed on the form.

(2) Notice. The health care insurer must give notice of the request to the employee and the health care provider that performed the services that are the subject of the reimbursement request. The notice shall include a copy of the reimbursement request and an explanation that the health care insurer is seeking reimbursement for medical care costs.

(c) Deadlines for Response to Reimbursement Request to the Workers' Compensation Carrier.

(1) 90 Day Response Deadline. The workers' compensation carrier must respond to a reimbursement request under this section in writing not later than the 90th day after the date the reimbursement request was first received, unless additional information is requested, pursuant to paragraph (2) of this subsection.

(2) Request for Additional Information. The workers' compensation carrier may request additional information from the health care insurer if there is not sufficient information to substantiate the claim. The health care insurer has 30 days after receiving the request for more information to provide the information requested to the workers' compensation carrier. Any request for additional information shall be in writing, be relevant and necessary for the resolution of the request. A request for medical information must be for information that is contained in or in the process of being incorporated into the employee's medical billing record maintained by the health care insurer. A workers' compensation carrier shall not be held responsible or otherwise penalized for the costs of obtaining additional information if the workers' compensation carrier denies payment in order to move to dispute resolution to obtain additional information to process the request. It is the health care insurer's obligation to furnish its agents with any information necessary for the resolution of a reimbursement request. The Division considers any medical billing information or documentation possessed by the health care insurer or one of its agents to be simultaneously possessed by the health care insurer and all of its agents.

(3) 120 Day Response Deadline. If the workers' compensation carrier has requested additional information from the health care insurer pursuant to paragraph (2) of this subsection, the workers' compensation carrier must respond in writing to the health care insurer's reimbursement request not later than the 120th day after the date the reimbursement request was first received, unless otherwise provided by mutual agreement.

(d) Response to a Reimbursement Request. The workers' compensation carrier must respond to a reimbursement request by either paying, reducing or denying payment.

(1) Paying or Reducing Payment.

(A) The workers' compensation carrier shall pay the health care insurer the lesser of:

(i) the amount payable under the applicable Division fee guideline as of the date of service; or

(ii) the actual amount paid by the health care insurer.

(B) If No Fee Guideline. In the absence of a Division fee guideline for a specific service paid, the amount per service paid by the health care insurer shall be considered in determining a fair and reasonable payment pursuant to §134.1 of this title (relating to Medical Reimbursement).

(C) Interest. The health care insurer may not recover interest as a part of the payable amount.

(D) Previous Payments. The workers' compensation carrier shall reduce any reimbursable amount by any payments the workers' compensation carrier previously made to the same health care provider for the provision of the same health care on the same dates of service. In making such a reduction in reimbursement, the workers' compensation carrier shall provide evidence of the previous payments made to the health care provider.

(E) Notice to Employee and Health Care Provider. The workers' compensation carrier must give notice of its response to the reimbursement request to the employee and the health care provider that performed the services that are the subject of the reimbursement request. The notice shall include an explanation that the claim is compensable and that the health care provider must reimburse the employee for any amounts paid to the health care provider by the employee.

(F) The health care provider may submit a reimbursement request to the workers' compensation carrier for any money owed under Division fee guidelines for the medical services rendered on a compensable claim and is entitled to dispute resolution under §133.307 of this title (relating to MDR of Fee Disputes). The workers' compensation carrier is liable for full payment in accordance with Division fee guidelines and applicable rules for the medical services rendered on a compensable claim.

(2) Denial of the Reimbursement Request. The workers' compensation carrier must provide sufficient explanation regarding the basis for a denial of the reimbursement request.

(3) Explanation of Benefits. The workers' compensation carrier must provide the health care insurer, all health care providers, and the employee an explanation of benefits (EOB) in the form and manner prescribed by the Division;

(e) Reimbursement of Employee. If the employee's medical care costs are reimbursable under Title 5 of the Labor Code, a health care provider must refund to the employee any payments made by the employee to the health care provider, including but not limited to, co-pays and deductibles. Reimbursement must be made within 45 days of receipt of the notice that the claim is compensable.

(f) Filing Notice of Subclaimant Status.

(1) 120 Day Deadline. A health care insurer must file a written notice of subclaimant status with the Division not later than the 120th day after a workers' compensation carrier fails to respond to a health care insurer's reimbursement request or reduces or denies the requested reimbursement amount.

(2) Location for Filing Notice. The notice may be filed with the Division of Workers' Compensation at any local Division field office or at the Division's central office in Austin, Texas.

(3) One Employee Per Notice. A health care insurer must file separate notices for each individual employee in which the health care insurer seeks subclaimant status.

(4) One Notice Per Employee Date of Injury. If an individual employee has multiple claims based on different dates of injury, the health care insurer must file a separate notice for each date of injury for which medical benefits were provided.

(5) Form. The notice of subclaimant status must be in the form and manner prescribed by the Division.

(g) Request for Dispute Resolution. The rules applicable to dispute resolution vary according to the reason for denial of reimbursement. Disputes regarding extent of injury, liability, or medical necessity must be resolved prior to pursuing a medical fee dispute. A request for medical dispute resolution may be filed in lieu of a request for subclaimant status, and shall be considered a request for subclaimant status for purposes of this section.

(1) Claim or Treatment Not Compensable.

(A) A health care insurer must file a request for a benefit review conference pursuant to §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference) with the Division not later than the 120th day after a workers' compensation carrier reduces or denies the requested reimbursement amount based on compensability or extent of injury issues.

(B) The health care insurer may pursue dispute resolution to establish that the injury claim is compensable under Labor Code §409.009 and §140.6 of this title (relating to Subclaimant Status: Establishment, Rights, and Procedures).

(C) A subclaim dispute based on a denial of reimbursement due to compensability or extent of injury is subject to dispute resolution pursuant to Chapters 140 - 143 of this title (relating to Dispute Resolution).

(2) Lack of Medical Necessity.

(A) A health care insurer must file a request for medical dispute resolution with the workers' compensation carrier or the carrier's utilization review agent not later than the 120th day after a workers' compensation carrier reduces or denies the requested reimbursement amount due to lack of medical necessity.

(B) A medical dispute based on the workers' compensation carrier's denial of a health care insurer's reimbursement request due to lack of medical necessity is subject to dispute resolution pursuant to §133.308 of this title (relating to MDR by Independent Review Organizations).

(C) A subclaimant shall follow the independent review process allowed for a non-network health care provider seeking retrospective review of a service under that section, with any modifications specified by this subsection.

(D) A request for reconsideration is not required prior to a request for independent review, notwithstanding the requirements for requesting independent review under §133.308 of this title.

(E) A request for independent review may be filed, notwithstanding the timeliness requirements for filing a request for independent review under §133.308 of this title.

(F) Notwithstanding the provisions of §133.308 of this title, regarding independent review organization requests for additional information, if a health care provider is requested to submit records, the health care insurer shall reimburse the health care provider copy expenses for the requested records.

(3) Reduction, Denial or Failure to Respond.

(A) A health care insurer must file a request for medical dispute resolution with the Division not later than:

(i) the 120th day after a workers' compensation carrier fails to respond to a health care insurer's reimbursement request or reduces or denies the requested reimbursement amount for reasons other than lack of medical necessity, or

(ii) 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability or extent of injury issues raised in accordance with this subsection.

(B) A medical dispute based on the workers' compensation carrier's failure to respond to a health care insurer's reimbursement request or the result of a reduction or denial of the requested reimbursement amount for reasons other than those listed in paragraphs (1) or (2) of this subsection is subject to medical dispute resolution pursuant to §133.307 of this title, notwithstanding the definition of medical fee dispute in §133.305 of this title (relating to MDR - General), and the health care insurer must follow the medical fee dispute resolution process allowed for a health care provider under that section, with any modifications specified by this subsection.

(C) Notwithstanding the requirements of §133.307(c)(2) of this title, a health care insurer shall only be required to include with a request for medical fee dispute resolution, a copy of the health care insurer reimbursement request as originally submitted to the workers' compensation carrier, a copy of the EOB relevant to the fee dispute received from the workers' compensation carrier, and sufficient information to substantiate the claim.

(D) A request for reconsideration is not required prior to a request for medical fee dispute resolution, notwithstanding the requirements for requesting medical fee dispute resolution under §133.307 of this title.

(E) A request for medical fee dispute resolution may be filed, notwithstanding the timeliness requirements for filing a request for medical fee dispute resolution under §133.307 of this title.

(h) Multiple Entities Seeking Reimbursement for Same Services. If there are multiple entities seeking reimbursement for the same services and dates of services for the same health care insurer for the same employee, the following apply:

(1) When the workers' compensation carrier obtains a release from the health care insurer indicating that those specific services have been paid in full, no other entity may collect for those specific services.

(2) If a dispute remains over the fees to be paid for those specific services, the first in time to file a dispute with the Division is the only subclaimant that has a right to dispute resolution, and reimbursement, for that employee's claim and those specific services rendered unless that subclaimant abandons the dispute resolution process prior to a final adjudication of the issues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801946
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 804-4715

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TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD
SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.2, §181.9

The Texas Bond Review Board (BRB) proposes amendments to §181.2 and §181.9, concerning Bond Review Rules. Texas Government Code Chapter 1231 was amended by the Texas Legislature 80th Regular Session, Senate Bill 1332 effective September 1, 2007. The proposed amendments to the rules are to address the changes in Texas Government Code Chapter 1231 and to clarify processes related to the issuance of state securities.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government

as a result of enforcing or administering the amendments of these sections.

Mr. Kline has also determined that for each year of the first five years the amendments are in effect the public will benefit from clearer debt issuance and reporting procedures. There will be no effect on small businesses. There is no additional anticipated economic cost to persons to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to *kline@brb.state.tx.us* or faxed to (512) 475-4802.

The amendments are proposed under Texas Government Code §1231.022, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

The proposed amendments implement the Texas Government Code Chapter 1231.

§181.2. Notice of Intention to Issue.

(a) - (d) (No change.)

(e) An issuer intending to issue state securities that are exempt from approval pursuant to §181.9 of this title shall submit during regular business hours a written or electronic notice of intent to the bond finance office at least seven [~~five~~] business days prior to the date the securities are to be issued. Prospective issuers are encouraged to file the notice of intention as early in the issuance planning stage as possible.

(1) - (2) (No change.)

§181.9. State Exemptions.

(a) - (c) (No change.)

(d) At the written request of one or more members of the Board given to an issuer within six [~~four~~] business days of the notice forwarded pursuant to subsection (c) of this section, an issuer is required to follow the formal approval process regardless of this section; provided, however, if an issuer is required to follow the formal approval process pursuant to this section, the notice of intent will be treated as a completed application for purposes of §181.3 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801923
Melissa Robbins
Financial Analyst
Texas Bond Review Board
Earliest possible date of adoption: May 25, 2008
For further information, please call: (512) 475-4803

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The Texas Ethics Commission withdraws the proposed new §20.50 which appeared in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1669).

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801904
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: April 10, 2008
For further information, please call: (512) 463-5800

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 8. ADVISORY OPINIONS

1 TAC §8.3

The Texas Ethics Commission adopts an amendment to §8.3, relating to the subject of an advisory opinion. The amendment is adopted without changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 11) and will not be republished.

The amendment to §8.3 adds §2152.064 and §2155.003 of the Government Code to the list of laws from which the commission will issue an advisory opinion.

No comments were received regarding the proposed rule during the comment period.

The amendment to §8.3 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801908
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS
SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.11

The Texas Ethics Commission adopts an amendment to §34.11, relating to the reporting of joint lobby expenditures. The amendment is adopted without changes to the proposed text as published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1669) and will not be republished.

The amendment to §34.11 reflects changes made by House Bill 2735, 80th Legislature. The new law provides that the lobbyist reports only the portion of the amount of the joint expenditure attributable to the lobbyist, including any amount made on behalf of the lobbyist by a person who is not a registered lobbyist.

No comments were received regarding the proposed rule during the comment period.

The amendment to §34.11 is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801906
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2008
Proposal publication date: February 29, 2008
For further information, please call: (512) 463-5800

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CHAPTER 45. CONFLICTS OF INTEREST

1 TAC §§45.1, 45.3, 45.5, 45.7, 45.9

The Texas Ethics Commission adopts new §§45.1, 45.3, 45.5, 45.7, and 45.9, relating to the conflicts of interest requirements for the chief clerk or any other employee of the Texas Comptroller of Public Accounts and a Texas Facilities Commission member, employee, or appointee. The new rules are adopted without changes to the proposed text as published in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1671) and will not be republished.

House Bill 3560, 80th Legislature, transfers to the Texas Comptroller of Public Accounts duties of the Texas Building and Procurement Commission that do not primarily concern state facilities and renames the commission the Texas Facilities Commission. The new rules under Chapter 45 (Conflicts of Interest) are added to address the conflict of interest portions of §2155.003 and §2152.064 of the Government Code.

Section 45.1 is added to state that Chapter 45 applies to §2155.003 and §2152.064 of the Government Code.

Section 45.3 is added to define relevant terms used in the conflict of interest provisions of §2155.003 of the Government Code at issue that relate to the comptroller.

Section 45.5 is added to define relevant terms used in the conflict of interest provisions of §2152.064 of the Government Code at issue that relate to the Texas Facilities Commission.

Section 45.7 is added for guidance on the issue of rebates as applied to the conflict of interest provisions of §2155.003 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when the chief clerk or employee of the comptroller is not prohibited from accepting a rebate.

Section 45.9 is added for guidance on the issue of rebates as applied to the provisions of §2152.064 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when an employee, appointee, or commission member of the Texas Facilities Commission is not prohibited from accepting a rebate.

No comments were received regarding the proposed rules during the comment period.

The new §§45.1, 45.3, 45.5, 45.7, and 45.9 are adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801907
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: April 30, 2008
Proposal publication date: February 29, 2008
For further information, please call: (512) 463-5800

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 2. INFORMAL COMPLAINT PROCEDURE

16 TAC §§2.1, 2.5, 2.7

The Railroad Commission of Texas adopts amendments to §2.1, relating to Informal Complaint Procedure, new §2.5, relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas, and new §2.7, relating to Administrative Penalties for Failure to Participate, with changes to the versions published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8399). The Commission adopts these rules to implement portions of legislation enacted by the 80th Legislature, specifically House Bills 1920 and 3273.

House Bill 1920 enacted a new section in Texas Natural Resources Code, Chapter 85, pertaining to the informal complaint process regarding loss of or inability to account for natural gas gathered or transported. New §85.065 authorizes a producer to submit a written request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered to the person by the producer; describes the contents of such requests; sets deadlines by which the response must be made; and establishes conditions under which a complaint may be filed at the Commission.

House Bill 3273 enacted new sections in Texas Natural Resources Code, Chapter 81, that give the Commission new authority with respect to certain natural gas-related activities. New §81.058(c) authorizes the Commission, after notice and opportunity for hearing, to impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. An administrative penalty imposed under Texas Natural Resources Code, §81.058, may not exceed $5,000 a day for each violation, but each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section. The remedy provided by this section is cumulative of any other remedy the Commission may order.

New Texas Natural Resources Code, §81.059(b), provides that if the parties request that an informal dispute resolution mediation be conducted at a location other than the headquarters of the Commission in Austin, the parties must reimburse the Commission for the Commission's costs related to travel to those other locations.

The Commission received comments from Apache Corporation ("Apache"); Crosstex Energy Services, L.P. ("Crosstex"); State Representative Myra Crownover ("Representative Crownover"); Enbridge Energy Company, Inc. ("Enbridge"); Texas Alliance of Energy Producers ("the Alliance"); Texas Independent Producers and Royalty Owners Association ("TIPRO"); Texas Oil and Gas Association ("TXOGA"); and Texas Pipeline Association ("TPA"). In general, Apache, the Alliance, and TIPRO favored the proposed rules; Enbridge, Crosstex, TXOGA, and TPA either opposed the rules or offered detailed criticisms and suggested changes or both; and Representative Crownover urged the Commission to be mindful of the spirit of the agreements underlying House Bill 3273.

To implement these new statutory provisions, the Commission amends §2.1(c)(3) to include a reference to the more specific informal complaint procedure in new §2.5; the Commission adopts subsection (c)(3) with a change to correct the revised title of 2.5. The Commission also adopts new §2.1(h) regarding the requirement that the participants in an informal dispute resolution proceeding reimburse the Commission for the travel related expenses of its employees when they travel to a location outside Austin to participate in a mediation meeting. The Commission received no specific comments with respect to the proposed amendments in §2.1.

The Commission adopts new §2.5 with the revised title of Informal Complaint Process Regarding Loss of or Inability to Account for Gas. The new rule implements the provisions of Texas Natural Resources Code, §85.065, which applies only to the loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas on or after September 1, 2007. (The loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas before September 1, 2007, is governed by the law in effect on the date the gas was tendered.) The Commission will apply the policies, definitions, and procedures set forth in §2.1 to the extent they are consistent with §2.5. If the provisions of §2.1 are inconsistent with §2.5 or are not applicable, the provisions of §2.5

will apply to complaints pertaining to loss of or inability to account for gas that are filed pursuant to Texas Natural Resources Code, §85.065.

The Commission adopts new §2.7, relating to Administrative Penalties for Failure to Participate, to implement the authority delegated to the Commission by Texas Natural Resources Code, §81.058(c), which provides that the Commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. This section applies to informal complaint resolutions proceedings filed pursuant to §2.1 of this title and §2.5 of this title.

TIPRO strongly supported the new rules as proposed, and recognized that the Commission relied heavily on the legislative language. TIPRO also recognized that an agency must often include detailed language that was not part of the legislation, specifying its exact procedures to ensure that rules are applied consistently and that entities subject to the rule know what to expect. TIPRO took the position that the issue is not whether additional language should be included, but whether the additional language is in keeping with the intent of the legislation.

Apache complimented the Commission on excellent work in preparing the proposed rules to implement House Bill 1920; Apache finds that the proposed rules fulfill both the letter and the spirit of that legislation. Apache also offered specific amendments to the proposed rule text to enhance the process and make the rules easier to administer. In addition, Apache addressed the argument that the Commission does not have authority to promulgate rules to implement House Bill 1920, and specifically recognized that because the Commission will have to decide what lost or unaccounted for gas is during an informal complaint proceeding, it is best to have knowledge of what those terms mean at the beginning of the process rather than on a case-by-case basis. Apache also addressed arguments suggesting that Apache is using the rulemaking process related to House Bill 1920 to better its position in pending litigation to which Apache is a party. Apache denied such a motive and asserted that because the Commission's rules will operate prospectively, they will not have any effect on the lawsuit currently before the courts. In addition, Apache points out that the issue before the court in the Apache case is controlled by contract terms.

The Alliance commented that overall the proposal properly implements House Bill 1920, because the new rules will perform the important function of making clear to all parties, in advance, the basic guidelines. The Alliance commented that because the guidelines must be uniform for all parties, they should be adopted in rules rather than left to case-by-case determination.

Enbridge asserted that no rules are needed to implement the statutes, and the proposed rules do not further the goals of the informal complaint process. Enbridge had hoped that any rules would make the Commission dispute resolution process better, not worse, and stated that the Commission can accomplish that goal by adopting rules, if rules are needed, that respect the agreements reached in the legislative process rather than rules which make substantive changes to those statutes and result in a process which creates greater costs and more burdensome proceedings.

Crosstex, in all respects but one (discussed in a subsequent paragraph of this preamble), fully supports and incorporates by reference the comments of TPA. Crosstex cautioned the Commission, whose powers are limited to those specifically provided by the statute, against reaching beyond its statutory authority to make substantive changes to the statute through the implementing rules it creates.

TXOGA pointed out that House Bill 1920, a product of a very contentious and strongly negotiated debate among industry participants, achieved a balance of concerns and interests mutually agreed to among the involved parties. As a result of the delicate nature of the agreement leading to the legislation, TXOGA supports having new §2.5 follow as closely as possible the originating legislation, in an effort to preserve the mutual industry position reached in the legislation and believes the rule should not change, modify, add to or take away from the narrow agreements reached in the legislation.

TPA also referred to the extensive negotiations during the legislative session with respect to House Bill 1920, and noted that what is not in that bill was as intensely negotiated as what is in the bill, and the parties asked the legislature to pass the language without changes. TPA's comment asked that the Commission do the same and not change the agreements reached. TPA also stated that the bill is a procedural statute with detailed rights and obligations and thus no rule is needed to establish how the process is to work or what information is to be produced. If any rule is needed, TPA commented that only the statutory language needed to be placed in the Texas Administrative Code.

Representative Crownover asked that the Commission take into consideration that the language used in the rules would convey the spirit of agreement by the two groups that accomplished the passing of this necessary legislation that the proposed rules are based on.

In response to these general comments, the Commission appreciates the comments in support of the rules, but also acknowledges that there are some areas that may need to be clarified. The Commission disagrees that there is no need for the rules, or that only statutory language should be reproduced in rule form. First, the Commission notes that the amended and new rules in Chapter 2 implement both House Bill 1920 and House Bill 3273. No Commission representatives participated in the negotiations related to House Bill 1920, but Commission Staff did participate in the development of the language of House Bill 3273, sponsored by Representative Crownover. Parts of both bills relate to the informal complaint resolution process that was already in place at the Commission, in rule §2.1, and one important function of the new rules in Chapter 2 is to ensure that the additional procedural aspects of the two bills will be integrated smoothly into the existing procedural framework for informal complaints. Nothing in either bill speaks specifically to the mechanical procedures that are an important component of this agency's management of this administrative procedure. The Commission finds that a comprehensive set of rules provides the necessary clarity and direction both for those entities required to comply with the statutes and Commission rules and for Staff to properly administer the statutes. Further, since 1975, it has been a requirement in state law that an agency must adopt rules of practice stating the nature and requirements of all available formal and informal procedures (Texas Government Code, §2001.004). The Commission finds that the amendment and new rules are both necessary and within the authority of the Commission to adopt.

Further, while there may have been agreement among participants in the development of both bills, the language in the legislation is somewhat general in scope. For example, House Bill 3273 added provisions to Texas Natural Resources Code, Chapter 81, that authorize the Commission to impose an administrative penalty against certain entities if, as a participant to an informal complaint resolution proceeding, such an entity is determined by the Commission to have "failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding." The Commission could interpret and apply this authority on a case-by-case basis, but has determined that it would be helpful to potential participants in informal complaint resolution proceedings to be informed of the conduct that may trigger a Commission enforcement action. This approach has at least two elements to commend it: first, it promotes a consistent interpretation and application of the rule, and second, it allows participants in informal complaint resolution proceedings to conform their conduct to the expected standard, rather than learning after the fact that they have run afoul of one or more of those standards. This is particularly important for entities that are respondents in such proceedings, because their participation is mandatory under Commission rule §2.1.

With respect to new §2.5(c), which proposed definitions for certain terms, TIPRO commented generally that it believed the proposed rules defined terms reasonably and when needed. TIPRO especially appreciated the proposed definitions that incorporated existing statutory definitions.

TXOGA commented that the definition of "accounting" in §2.5(c)(1) should be deleted, because the term has a generally understood meaning and does not require definition in this rule. TXOGA also noted that the definition is duplicative of the requirement in §2.5(e)(3) that the person gathering or transporting gas "shall provide all elements of information listed in subsection (d)(1)(A) - (J) of this section, regardless of whether the producer requested each of those in the request for explanation of loss." The Commission disagrees with this comment, and finds that a definition is appropriate. However, the Commission also has amended the wording in the definition of the term "accounting" for greater specificity. Rather than defining "accounting" as "including but not limited to," the new wording provides that an "accounting" "may include" the specified elements. This change renders the definition virtually identical to the statutory provision from which it is derived, Texas Natural Resources Code, §85.065(c).

There were many comments regarding the proposed definition of "lost or unaccounted for gas (LUG)" in new §2.5(c)(2). The Alliance stated that this definition is ambiguous. It is not clear whether "lost gas" is a subset of gas that "cannot be accounted for," or is in addition to gas that "cannot be accounted for." Similarly, the Alliance noted, it is not clear whether the reference in §2.5(c)(2)(B) to "the difference between the volume or units of gas measured or allocated into a system and the volume or units of gas measured or allocated out of that system" is intended to apply only to gas that "cannot be accounted for" or to the entire category of lost or unaccounted for gas. The Alliance requests that these issues be addressed in the final rule, and agreed with the definitions offered by Apache in its comments.

Apache commented that "lost gas" is different from "unaccounted for gas" and stated its continued preference that these terms be defined separately. As the minimum alternative, however, Apache believes that "lost or unaccounted for gas" should be defined as in proposed §2.5(c)(2). Apache recommended that "lost gas" be defined as "gas that can be proven to have left or escaped a pipeline or plant system into surrounding soil or atmosphere whether intentionally or otherwise," and that "unaccounted for gas" be defined as "gas that cannot be accounted for, the volume of which is the difference between the volume or units of gas measured or allocated into a system and the volume or units of gas measured or allocated out of that system."

Apache addressed whether the specific definitions are needed and the recommendation that the Commission's rules merely recite the words of the statute by noting that at no time during the negotiations or passage of House Bill 1920 did Apache agree to any limitation on the Commission's authority to promulgate rules to implement the bill. The definitions proposed by the Staff are an excellent example of where the Commission has exercised its discretion and authority to implement the bill. That is, the Commission has recognized that it will have to decide what lost or unaccounted for gas is during this process and that it is best for all concerned that they have knowledge of what those terms mean at the front end of the process rather than on a case-by-case basis. Apache finds disingenuous the argument that the Commission does not need to implement House Bill 1920 through rules. Those who made this argument asked Apache to use the Commission's informal complaint process to resolve issues pertaining to lost or unaccounted for gas, but now that House Bill 1920 has passed, these same entities argue that the Commission should not use its discretion and authority to implement the necessary regulations. Apache concludes that if the Commission's informal complaint process was good enough to be the forum for resolving such complaints, then the Commission must have authority to resolve the fundamental issues, of which the first is what constitutes lost or unaccounted for gas.

Apache further took issue with TXOGA's position that the terms not be defined. Apache stated that even though it had suggested other specific definitions, the Commission has recognized the need to have some definitions in the proposed rules. Apache commented that, under the Commission's proposal, there is hope that the informal complaint resolution process will work. Under TXOGA's approach, Apache commented, the informal complaint process will become nothing but an argument over what is and what is not "lost gas" or "unaccounted for gas." Under the TXOGA approach, these questions will have to be resolved on a case-by-case basis. No one will have predictability under such a system, and, once again, producers will have an impediment to using the informal complaint resolution process.

Enbridge commented that even though a definition of "lost and unaccounted for gas" is not used to decide any issue in the statute or the proposed rule, the Commission proposed a definition of the term which attempts to distinguish between "lost" gas and "unaccounted for" gas. "LUG" is often defined in contracts. Definitions have been attempted by various regulators or industry associations, with differing results. Even the Commission has more than one existing definition. It is well known that the LUG definition is being litigated by some of those involved in the legislation. Yet, despite all the attempts to define LUG, there is no standard definition in use in the industry or government. Attempting to define a contentious term when there is no particular need to do so does not further the goal of making the Commission process faster, easier, and cheaper. It will further the goal of increased litigation and disputes.

TXOGA recommended that the term "lost and unaccounted for gas" not be defined. The statute itself does not contain a defini-

tion of LUG and one is not needed to implement the provisions of House Bill 1920.

TPA's comments on the proposed definition of "lost or unaccounted for gas" were extensive. TPA found particularly problematic the Commission's attempt to draw a distinction between "lost" gas and "unaccounted for" gas, an issue that is now pending in a contract action before the Texas Supreme Court. TPA noted that the separate definitions of "lost" gas and "unaccounted for" gas submitted in comments by an entity that is a party to that litigation appeared to be based on the party's brief in that litigation. TPA finds that the rule therefore creates the impression that the Commission has decided a hotly contested issue without any apparent need to do so. In fact, TPA commented, the term "lost and unaccounted for gas" does not actually appear in the operative provisions of the proposed rule or the statute.

TPA's commented further that, as evidenced by the testimony and discussions at the legislature, "lost and unaccounted for gas" means different things in different contracts and in different contexts. In many contracts, for example, "lost and unaccounted for" is simply a fixed factor that is applied each month by agreement of the parties. Much of what goes into a "LUG" calculation is not "gas" at all but components of a full well stream that have to be removed in order to market the gas. The definition of "lost and unaccounted for' used in a Commission rule cannot be consistent with all of the different ways the terms are used in the industry and may prejudice one of the litigants in any dispute.

TPA conceded that while some additional language may be needed in a rule in order to implement the statute, some of the provisions included in the proposed rule are substantive changes to the statute. The differences between the negotiated bill language and some of the provisions in the proposed rules would put the Commission in the position of changing the agreements that were reached after months of intense negotiations.

TPA pointed out that as proposed, §2.5(c)(2) contained a definition of lost and unaccounted for gas which both is unnecessary and could result in unanticipated and unknown consequences in gas purchase or transportation agreements. TPA noted that the proposed rule definition is circular. Any gas that escapes from a system will always be included in the difference in the volumes measured or allocated into a system and the units measured or allocated out. Therefore, "lost gas" volumes also show up in the measurement differences, which are defined as "unaccounted for" in the proposed rule. Moreover, gas that escapes from a system and is known is not measured; at best, it can be estimated. Unknown escapes are not even estimated. Therefore, trying to calculate "lost" separately from "unaccounted for" will never result in accurate numbers. Further, "lost and unaccounted for gas" may not be a difference in gas volumes at all, because natural gas is only a part of the typical full well stream that is gathered, processed, and treated. Samples of the full well stream represent only what was in the well stream at the time of sampling; differences due to varying production from particular wells, changes in composition over time, or differences due to operational changes by the well operator will all affect any "lost and unaccounted for" calculation. Differences in the types of measurements and variations under different conditions will show up in the "lost and unaccounted for" calculation. Thus, TPA concludes that it is unlikely that any definition of lost and unaccounted for gas will accurately reflect what actually occurs on a particular system.

TPA further noted that the Commission has at least two current definitions of "lost and unaccounted for gas" (in §7.5525 of this title (relating to Lost and Unaccounted for Gas) and §7.115(21) and (22) of this title (relating to Definitions)) and that other agencies have tried to define "lost and unaccounted for" gas. TPA asserts that the definition as proposed in §2.5(c)(2) serves no purpose, because House Bill 1920 provides that a producer may ask for an explanation of "any loss of or inability to account for the gas tendered," without being limited to any particular definition of the term or manner of calculating lost or unaccounted for gas. TPA thus concludes that a definition is not relevant to the rights and responsibilities of the entities affected and should not be particularly relevant to the Commission's implementation of the statute.

In response, the Commission appreciates those comments in support of the definition of the term "lost or unaccounted for gas (LUG)" as proposed, but also must acknowledge that there are too many disparate and often contradictory definitions of "lost gas," "unaccounted for gas," and "lost and unaccounted for gas" to be useful for the purpose of these rules. The Commission specifically disagrees with comments suggesting that the Commission intended to (or even could) influence the outcome of litigation pending at the Texas Supreme Court regarding the meaning of contract provisions related to lost and/or unaccounted for gas. The Commission's intent here was not to resolve once and for all what are clearly long-standing and fundamental disagreements about "lost gas" and "unaccounted for gas" and whether those are the same, overlapping, or completely separate. Rather, first, the Commission had hoped to define in a general way a term that could be used as a shorthand for particular types of complaints, so that the terminology of the rules was not impossible to read and understand. Second, the Commission had hoped to use the term to identify those informal complaints that must follow the specific procedures set forth in Texas Natural Resources Code, §85.065, *i.e.,* those complaints that must be preceded by a producer's written request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered to the person by the producer. In this regard, the Commission specifically disagrees with TPA's comment that a definition is not relevant to the rights and responsibilities of the entities affected and should not be particularly relevant to the Commission's implementation of the statute. Because the current informal complaint resolution process outlined in Commission rule §2.1 does not require that a producer seek an explanation from a person who gathers or transports gas for the producer as a prerequisite to the filing of a complaint pursuant to §2.1, the Staff had hoped to find a way of more easily identifying matters that must follow the more specific procedural requirements imposed by House Bill 1920. All of the opportunities provided by that legislation invoke specific deadlines, and the longer it takes to categorize a complaint, the more difficult it is to meet those deadlines.

The Commission further disagrees that there is any intent to change any agreements that may have been reached during negotiations on the legislation; Commission representatives neither observed nor participated in such negotiations. The Commission's goal is to provide guidance to those entities required to comply with the rules and to the Staff who must administer these procedures impartially and within statutory deadlines.

Nevertheless, the Commission must agree with the comments of TXOGA and TPA that a single "one size fits all" definition is inappropriate to address case-by-case issues that may arise in an informal dispute resolution process. The Commission's goal

is to maintain discretion and flexibility in mediating any informal complaints relating to the loss of or inability to account for gas. The Commission therefore adopts a definition of the phrase that is used in Texas Natural Resources Code, §85.065, "loss of or inability to account for gas." As adopted, the definition reads: "(2) Loss of or inability to account for gas--For purposes of mediating disputes pertaining to issues involving the 'loss or of inability to account for gas,' the Commission will examine the difference between the amount of gas metered into a system and the amount metered out."

With respect to the definition of "person who gathers or transports gas" in new §2.5(c)(3), TPA commented that common purchasers that neither transports nor gathers should not be included, because the statute refers only to gatherers or transporters. While a common purchaser may also be a gatherer or transporter, it is not necessarily the case that the two are identical and the rule should not impose requirements on those parties who do not operate the systems at issue and do not have the information necessary to respond to the complaint.

TXOGA commented that it is not appropriate to use the term "common purchaser" in this definition because this makes people who do not own or operate any pipeline subject to the rule, which should not be the intent of the rule. TXOGA recommended substituting the words "operator of" for the phrase "common purchaser of gas, gas utility, or take of natural gas including but not limited to," thus changing the definition of "person who gathers or transports gas" to read: "Any operator of a gas pipeline that provides gas gathering and/or transmission transportation service for a fee or some other compensation."

The Commission disagrees with these comments. The definition in §2.5(c)(3) does not bring all common purchasers within the scope of the definition, only those common purchasers that gather or transport gas for another entity. A common purchaser that does not gather or transport gas would not be subject to the rule. Further, the Commission's rule §7.115 includes the following definition of "transporter" (originally adopted as part of the Commission's code of conduct rule): "any common purchaser of gas, gas utility, or gas pipeline that provides gas gathering and/or transmission transportation service for a fee." This definition has been in place for more than ten years. However, to make this completely clear, the Commission adopts the definition with this additional clarifying statement: "A common purchaser that does not gather or transport gas is not subject to this section."

The Commission adopts the definition of "producer" as a person who owns or operates a well or wells producing oil or gas or both. Finally, the Commission adopts the definition of "waste" as it is defined in Texas Natural Resources Code, 85.046. The definitions in §2.1 apply in §2.5 as well. The Commission received no comments on these definitions as proposed, and the Commission adopts these without changes.

New §2.5(d) provides that, as a prerequisite to filing an informal complaint pursuant to Texas Natural Resources Code, §85.065, a producer must submit a written request for an explanation of loss to a person who gathers or transports gas for the producer in accordance with the requirements of this subsection. The subsection further describes the procedure by which the producer's request must be made and the information that the producer may ask for.

TPA commented that, as proposed, new §2.5(d)(1) fails to include the statutory provision providing for estimated data. The bill recognizes that much of the information on the laundry list will be "estimated," but the rule drops the word "estimated" from the list. That was an important part of the negotiations but is missing from the proposed rule. The language of the rule should be revised to be consistent with the statute. TPA recommended that the word "estimated" be added to subsection (d)(1)(D) - (H).

TXOGA stated that the statute recognizes that various items to be reported will not all be measured and some may be obtained by other means or "estimated." In subsection (d), the Commission has dealt very effectively with this by simply requiring the method of determination to be identified. TXOGA believe this is the preferred rule language and recommends that it remain as proposed.

The Commission agrees that the rule should mirror the statutory language, and has adopted the rule with the word "estimated" in §2.5(d)(1)(D) - (H).

New §2.5(d)(2) sets out the procedure by which the producer sends the request for explanation to a person who gathers or transports gas for the producer.

TPA commented that the requirement in §2.5(d)(2) that the producer's request for explanation be sent to the person listed on the Form P-5 on file with the Commission is the least effective way to get the notice to the personnel who have the information being requested. TPA stated that the request should be sent to the company contact, with the Form P-5 contact being only a last resort.

Although in other respects Crosstex fully supported and incorporated the comments of TPA, on §2.5(d)(2), Crosstex offered a different comment. Crosstex agreed with the requirement that the producer's request for explanation be sent to the address shown on the Form P-5 on file at the Commission. Crosstex acknowledged the varied contact arrangements within each company, and suggested that to ensure proper and timely responses to a producer's request for explanation, such a request should be sent to both the Form P-5 contact address and the producer's contact at the gatherer or transporter. The burden that such a requirement might present for a producer should be outweighed by their desire for accurate and timely responses.

The Commission disagrees with both TPA's and Crosstex's comments, but in recognition of the need to respond in a timely manner, the Commission has added additional methods of contacting the respondent to include both electronic mail and facsimile. The fourth sentence of subsection (d)(2) as adopted reads: "The producer shall send its complaint by facsimile or e-mail to the contact person and mail the request using United States Postal Service certified mail . . ." The Commission adopts subsection (d)(3) with a similar provision for allowing a response to be made by facsimile and e-mail as well as regular mail. As modified, these provisions should allow for more timely responses to a request for explanation.

New §2.5(d)(3) as proposed stated that not later than the 30th day after the date the person who gathers or transports gas receives the request from the producer, the person must provide the producer a written explanation of any loss of or inability to account for the gas tendered to the person by the producer. The person must include in the response any relevant information requested by the producer that is available to the person. In addition, for each element of information sought in a request for explanation of loss for which an amount of gas is to be provided, the person who gathered or transported the gas must state the method by which the amount was determined (measured, allocated, estimated, or other).

TPA commented that proposed §2.5(d)(3) creates a new requirement that is not in the statute. The statute requires only the production of the data on the "laundry list." The proposed rule, however, expands the requirement by providing that "the person shall include in the response any relevant information requested by the producer that is available to the person." The statute limits the production requirement to information that is both "relevant . . . and would be required to be included in an accounting under Subsection (c)" which is the laundry list set out above. The proposed language in the rule may have been intended to require only that information required by the statute but as written goes beyond the statutory obligation. The proposed rule should be rewritten to be consistent with the statute or deleted because it is not necessary given the other provisions of the rule and the statute.

The Commission agrees with TPA's comment and adopts the exact language that was included in the statute. As adopted, the second sentence of subsection (d)(3) reads: "The person shall include in the response any relevant information requested by the producer that is available to the person and that would be required to be included in an accounting under paragraph (1) of this subsection."

New §2.5(e) prescribes the procedure for filing an informal complaint. If a producer has submitted a request under subsection (d) to a person who gathers or transports gas for the producer and the person provides an inadequate explanation of any loss of or inability to account for the gas or fails to provide any explanation of any loss of or inability to account for the gas by the deadline stated in that subsection, the producer may file with the Commission an informal complaint against the person. An informal complaint may not be filed before the 30th day after the end of the production period covered by the complaint. An informal complaint must comply with the requirements of §2.1 of this title and, in addition, must include the items specified.

TXOGA commented that the provisions in §2.5(e)(1) and (2)(B) allowing an informal complaint to be filed as early as 30 days "after the end of the production period covered by the complaint" do not recognize the time the Commission allows for reporting production after the end of the production period. An informal complaint should not be filed until after the 30 day response period for the producer's request in subsection (d). TXOGA also pointed out that the producer's request will need to allow for a reasonable reporting period after the end of the production period. The very earliest an informal complaint could be filed would be 60 days (30 days for reporting and 30 days for response to a producer's request) and even that is not likely, since this does not consider any delay in the submission of the producer's request. TXOGA believes that the informal complaint filing should be keyed off the producer's response and not the end of production. TXOGA recommended revising the wording of subsection (e)(1) to read "an informal complaint may not be filed before the 30th day after the producer's request was received by the person who gathers or transports gas for the producer based on the certified mail receipt," and revising the wording of subsection (e)(2)(B) to read "state that at least 30 days have elapsed since the producer's request was received by the person who gathers or transports gas for the producer based on the certified mail receipt."

The Commission appreciates TXOGA's comments on the limited time for reporting current production data following the end of the production, but does not agree that a change in the rule is necessary. The earliest time that a producer may file an informal complaint is set by the statute, Texas Natural Resources Code, §85.065(b), and the Commission does not have authority to alter it. A producer may, of course, voluntarily wait an additional period of time to file an informal complaint. Further, the statute refers only to a production period, and does not refer to or establish time periods related to the filing of production reports with the Commission.

TPA commented that proposed §2.5(e) does not account for the shortened time frame allotted for gatherers and transporters to respond to informal complaints. The rule should be modified to require a complainant to, on the day of the filing with the Commission, send its complaint by facsimile or e-mail to the contact person.

The Commission agrees with TPA's comment and in the adopted rule text in both §2.5(e)(3) and (e)(5) has added the methods of contacting the respondent to include mail and facsimile or e-mail. This should allow more timely responses to all entities involved in the informal complaint process.

New §2.5(e)(3) as proposed stated that not later than the 14th day after the date the complaint is filed at the Commission, the person who gathered or transported the gas must provide to the producer and the Commission an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint. The person may provide the accounting on a thousand cubic feet or a million British thermal unit basis, as applicable, and must provide all elements of information listed in subsection (d)(1)(A) - (J), regardless of whether the producer requested each of those in the request for explanation of loss. In addition, for each element of information for which an amount of gas is to be provided, the person must state the method by which the amount was determined (measurement, allocation, estimation, or other).

Enbridge commented that the proposed rule results in a needless waste of time and money in responding to the Commission. Proposed §2.5(e)(3) requires the entire laundry list of material to be provided to the Commission in every case, regardless of the nature of the complaint. The same amount of time and money would have to be spent even if the amount of gas involved is small. The same amount of time and money would have to be spent even if most of the information on the list has no relevance to the actual inquiry. For example, the producer may complain about a difference in meter readings. The rule, however, requires a massive amount of data that have nothing to do with meters, and it requires the data to be produced in 14 days. Fourteen days is insufficient time to gather some of the large volumes of data required. Therefore, the respondent would be in non-compliance of the regulations, if adopted, despite good faith efforts to comply. Again, the Commission process would become more expensive and time consuming instead of less for both the respondent and the Commission staff.

Enbridge further commented that the rule should provide that the Commission will request data relevant to the complaint and should furthermore recognize that massive amounts of data do not have to be provided if the amount of gas in controversy is small. It would make no sense to require boxes of data to respond to a complaint which concerns insubstantial amounts of gas. The nature and magnitude of the data requested by the Commission should be consistent with the nature and magnitude of the dispute.

TXOGA commented that in new §2.5(e)(3) the Commission assumes all complaints will involve all accounting issues listed in

the statute. A request by a producer or an informal complaint may be limited to a specific issue, e.g., the effect of metering differences on the lost and unaccounted for calculation. In those cases where there is a very specific issue, neither the parties nor the Commission should be burdened with the production of documents which have nothing to do with the complaint. The statute, in §85.065(c), provides that the data requested by the Commission "may" include all the listed data, but the Commission is not required to do so when the Commission does not want or need it all. The Commission rule, however, requires the entire statutory list of accounting information to be filed with the Commission regardless of its relevance to the complaint. At the same time, TXOGA notes, the rule recognizes that the producer may request "any or all" of the listed items. TXOGA recommended revising the rule to provide that the Commission may require "any or all" of the information on the list that it wishes to receive rather than automatically requiring the filing of the entire list of documentation.

TPA commented that as proposed, new §2.5(e)(3) enlarges and expands the statutory obligation to produce data that was not agreed upon. TPA pointed out that the legislature adopted a very specific set of data that a gatherer or transporter could be required to produce under the statutory procedures. The statute provided a laundry list of items that could be requested and allowed the producer to request "any or all" of the items. The proposed rule tracks the statute with respect to the producer's request for explanation that is provided in new §2.5(d)(1). If the producer is not satisfied with the response, the statute allows the producer to file a complaint at the Commission. At that point, the gatherer or transporter has only 14 days to provide "the information the Commission determines to be necessary to resolve the complaint which may include" the same laundry list of information that the producer could request from the gatherer or transporter in the request for explanation. TPA disagrees with the proposed rule because it requires the gatherer or transporter to supply all the information on the laundry list regardless of whether the producer requested it and regardless of whether it has anything to do with the complaint. In TPA's view, the rule can and will result in a requirement for gatherers and transporters to collect massive amounts of information in only 14 days even though the information may be absolutely useless. That substantive addition to the statutory provisions adds a costly and burdensome requirement that goes farther than did the legislature and thus is, in TPA's view, beyond the Commission's authority. TPA observed that a request by a producer or an informal complaint may be limited to a specific issue, e.g., the effect of metering differences on the lost and unaccounted for calculation. In those cases where there is a very specific issue, neither the parties nor the Commission should be burdened with the production of documents which have nothing to do with the complaint. TPA wants the rule to be amended to provide that the Commission may require "any or all" of the information on the list that it wishes to receive rather than automatically requiring the filing of the entire list of documentation.

The Commission agrees with the comments from Enbridge, TXOGA, and TPA. The Commission supports efficiency in the request for data, and adopts subsection (e)(3) with revised language. As adopted, the Commission Staff will determine, on a case-by-case basis, what information is necessary to resolve an informal complaint under this section, and will communicate that to the respondent in a timely manner. The statute also recognizes that more time may be necessary to compile a response to an informal complaint. New §2.5(d)(4) permits the Commission to grant an extension of time to the person who gathered or transported the gas to provide the accounting required by subsection (d)(3), and subsection (d)(5) allows a person who does not have the information necessary to provide the accounting required by subsection (d)(3) to provide an alternative by providing to the producer and to the Commission a written explanation of the reason the person does not have the information. In addition, under §2.1(e)(10), a mediator may request additional information as the mediator deems necessary, and at any time during an informal complaint procedure, the mediator may request and review documents or information the mediator considers necessary in evaluating the complaint.

New §2.5(e)(4) states that the Commission may grant an extension of time to the person who gathered or transported the gas to provide the required accounting, but the additional time may not extend beyond the 45th day after the date the informal complaint was filed. The Commission received no comments on this provision, and adopts it without change.

New §2.5(e)(5) provides that if the person who gathered or transported the gas does not have the information necessary to provide the required accounting, the person must provide to the producer and to the Commission a written explanation of the reason the person does not have the information. The Commission adopts this paragraph with the clarifying change to permit response by facsimile or e-mail in addition to regular mail.

New §2.5(e)(6) states that if the person who gathered or transported the gas fails to provide the required accounting and the required explanation, the Commission will consider the informal complaint filed by the producer to be valid and will refer the matter for a formal evidentiary hearing. Some informal comments recommended adding another basis for referring a matter to a formal evidentiary hearing, specifically upon the Commission making a determination that the person who gathered or transported the gas committed waste. The Commission recognizes the statutory provision but must point out that there are due process considerations that must also be taken into account. The mediator in an informal complaint resolution proceeding cannot make determinations with respect to whether a person who gathered or transported gas committed waste, and the Commission cannot issue any orders based on a mediator's conclusions, precisely because the informal complaint resolution proceedings are not evidentiary hearings. A mediator can, however, determine that an evidentiary hearing is warranted, and one reason might be that, based on information developed in the informal complaint resolution process, it appears that the person who gathered or transported the gas may have committed waste. That would be part of the mediator's confidential memorandum submitted pursuant to §2.1 of this title.

TIPRO requested inclusion of language that clarifies that a referral to a formal evidentiary hearing in a dispute related to the loss of or inability to account for gas must be made on the Commission's own motion. Because a producer has the option at any time to raise this type of complaint in a formal proceeding, such language would remove any doubt that the Commission can initiate that step as empowered by the statute without either precluding or requiring action on a producer's part.

The Alliance commented that it is not clear what is meant by the language "the Commission shall consider the informal complaint filed by the producer to be valid," because if so considered, the matter would be referred to hearing. The Alliance requested that paragraph (6) be reworded to state: "If the person who gathered or transported the gas fails to provide the accounting required

by paragraph (3) of this subsection and the explanation required by paragraph (5) of this subsection, or if it appears that the person who gathered or transported the gas may have committed wasted, the matter shall be docketed for a formal evidentiary hearing." The Alliance also recommended that evidence of potential waste would warrant referral to hearing.

The Commission disagrees with both these comments and declines to make any changes in new §2.5(e)(6). Because new §2.5 was written specifically to integrate with the existing informal complaint resolution rule, a formal evidentiary hearing related to the loss of or inability to account for gas may be initiated by the director as a show cause proceeding (or requested by either the complainant or the respondent), as provided in §2.1(f). A determination by a mediator that a person who gathered or transported gas had failed to provide the accounting required by Texas Natural Resources Code, §85.065(c), or the explanation required by Texas Natural Resources Code, §85.065(e), and thus that the informal complaint filed by the producer is considered to be valid would warrant initiation of a show cause proceeding by the director. Similarly, a mediator's determination that an evidentiary hearing is warranted because it appears that the person who gathered or transported the gas may have committed waste would form the basis for a show cause hearing initiated by the director, pursuant to §2.1(f).

TXOGA and TPA commented on a provision in Texas Natural Resources Code, §85.065, that does not have a counterpart in the proposed rules in Chapter 2. TXOGA stated that the Commission overlooked Section 85.065(h) in the legislation concerning audit privilege, and recommended that this be included in the rule to preclude the need to enforce this requirement in a court of law. TXOGA recommended that wording similar to paragraph (6) be included in a new paragraph to read: "If a person fails to comply with a written request for an audit, the Commission shall consider the audit request filed by the producer to be appropriate and shall refer the matter for formal evidentiary hearing."

TPA's comment noted the absence of the audit right provisions in the Chapter 2 rules, but stated its position that those contractual provisions do not have to be in the rule to be effective. Nevertheless, TPA does not object to including the provisions if needed to assure producers that their agreements have been protected.

The Commission disagrees with these comments and declines to add a new paragraph to new §2.5(e). Subsection (h) of Texas Natural Resources Code, §85.065, is the only portion of that new statute that does not mention the Railroad Commission. There is no express authority for the Commission to adjudicate an alleged failure to honor the audit requirement, nor is there express authority for the Commission to remedy such a failure. The Commission views this portion of Texas Natural Resources Code, §85.065, as a matter that is essentially contractual in nature and outside the jurisdiction delegated to the Commission in other portions of this section.

New §2.7 concerns administrative penalties for failure to participate, and implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(c), which provides that the Commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. This section applies to informal complaint resolutions proceedings filed pursuant to §2.1 and §2.5.

The Commission adopts one clarifying change in subsection (a) to correct the title of §2.5, which is being changed on adoption.

New §2.7(b) identifies specific conduct that constitutes failure to participate in an informal complaint resolution proceeding. An administrative penalty imposed under new §2.7 may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

TPA commented that proposed §2.7(b) makes fact-findings without any facts. Section 2.7(b) contains a provision from Representative Crownover's bill dealing with those who refuse to participate in an informal dispute resolution process at the Commission. However, the rule sets out a laundry list of what constitutes "failure to participate." None of the items on that laundry list were part of the negotiations and while negotiations may have resulted in the adoption of some of that list (but not all) the fact is that the list was not part of the deal that was made. All of these items on the laundry list or proposed rule provisions determine, as a matter of fact, that the party has failed to participate. However, determining whether the acts actually were a failure to participate would depend on the facts of each case. The "failure" could be due to a good faith mistake or other reasonable cause. Some of the "failures" do, in fact, require an interpretation of the written response to the complaint to determine the response is inadequate. The Commission should not make any factual determinations in a rule; factual determinations should be made only after actual facts are known.

The Commission disagrees that it has made determinations of facts without any facts. The list in §2.7(b)(1) is a reiteration of the actions that a participant in an informal complaint resolution proceeding may be required to take. Whether a single instance of failure to take a required action constitutes "failure to participate" within the meaning of Texas Natural Resources Code, §81.058(c), would be an issue to be addressed in an enforcement proceeding, where the mitigating circumstances suggested by TPA can be addressed. The Commission finds that identifying specific examples that describe "failure to participate" is important, particularly for respondents whose participation in such informal complaint proceedings is mandatory under Commission rule §2.1. However, to address TPA's concern, the Commission adopts §2.7(b)(1) with a clarifying change. This paragraph now reads: to read: "Failure to participate in an informal complaint resolution proceeding may include . . ."

The amount of any penalty requested, recommended, or finally assessed in an enforcement action brought pursuant to new §2.7 will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations of §2.1 or §2.5, including the number of previous violations; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing under new §2.7 is convened, however, the opportunity for the person charged to reduce the penalty is no longer available. The remedy provided by this section is cumulative of any other remedy the Commission may order.

TIPRO commented that §2.7(d)(1) - (3) and (e) establish mechanisms for reducing penalties for violations that are not stated anywhere in the legislation. While it can be argued that those provisions fall within the Commission's discretion and are even

similar to provisions in other Commission rules, they are not envisioned by any part of House Bill 1920. TIPRO pointed out that some who take issue with the Commission establishing guidelines in rules pertaining to House Bill 3273 have no such objections to these guidelines that could mitigate their penalties.

The Commission acknowledges that the new sections of the Texas Natural Resources Code enacted by House Bill 3273 do not expressly provide for mitigation of penalties. However, the Commission agrees with TIPRO that administration of these new penalty provisions should be consistent with the Commission's other administrative penalty rules and the Commission makes no changes in §2.7(d) and (e).

The Commission adopts the amendments and new sections pursuant to Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; Texas Natural Resources Code, §81.052, which gives the Commission the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, and Texas Natural Resources Code, §§81.058 - 81.061, as enacted by House Bill 3273, 80th Legislature (2007). Among other things, these new provisions authorize the Commission, after notice and opportunity for hearing, to impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. An administrative penalty imposed under Texas Natural Resources Code, §81.058, may not exceed $5,000 a day for each violation, but each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section. The remedy provided by this section is cumulative of any other remedy the Commission may order. Texas Natural Resources Code, §81.059(b), provides that if the parties request that an informal dispute resolution mediation be conducted at a location other than the headquarters of the Commission in Austin, the parties must reimburse the Commission for the Commission's costs related to travel to those other locations. The Commission adopts the amendments and new sections pursuant to Texas Natural Resources Code, §85.065, as enacted by House Bill 1920, 80th Legislature (2007). This new section authorizes a producer to submit a written request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered to the person by the producer; describes the contents of such requests; sets deadlines by which the response must be made; and establishes conditions under which a complaint may be filed at the Commission.

The Commission also adopts the amendments and new sections pursuant to Texas Natural Resources Code, Title 3, Subtitle D, Chapter 111, and specifically Texas Natural Resources Code, §111.083, which requires common purchasers, as defined in Texas Natural Resources Code, §111.081(a)(2), to purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the Commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable to common purchasers of oil; Texas Natural Resources Code, §111.086, which requires common purchasers to purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state; Texas Natural Resources Code, §111.087, which prohibits common purchasers from discriminating between or against production of a similar kind or quality in favor of its own production; and Texas Natural Resources Code, §111.090, which authorizes the Commission to adopt rules that may be necessary to prevent discrimination.

The Commission also finds authority for the adopted rules in Texas Utilities Code, Title 3, Subtitle A, which authorizes the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities; Texas Utilities Code, §102.003, which grants the Commission the power to require that gas utilities report to the Commission information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of Title 3, Subtitle A (the Gas Utilities Regulatory Act); to require the filing with the Commission of, among other things, a copy of a contract or arrangement between a gas utility and an affiliate or a report filed with a federal agency or a governmental agency or body of another state; and to require that a contract or arrangement between a utility and an affiliate that is not in writing be reduced to writing and filed with the Commission; Texas Utilities Code, §104.003, which states that it is the duty of the Commission to ensure that every rate made, demanded, or received by any gas utility, or by any two or more gas utilities jointly, is just and reasonable, and directs that rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of consumers; Texas Utilities Code, §104.004, which prohibits a gas utility, as to rates or services, from making or granting any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage, and from establishing and maintaining any unreasonable differences as to rates of service either as between localities or as between classes of service; and Texas Utilities Code, §104.007, which prohibits gas utilities from discriminating against any person or corporation that sells or leases equipment or performs services in competition with the gas utility, and from engaging in any other practice that tends to restrict or impair that competition.

Additional authority is found in Texas Utilities Code, Title 3, Subtitle B, and specifically, Texas Utilities Code, §121.104, which prohibits pipeline public utilities from discriminating in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in their charges therefor, and from directly or indirectly charging, demanding, collecting or receiving from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; and Texas Utilities Code, §121.151, which directs the Commission to establish and enforce rules for transporting, producing, distributing, buying, selling, and delivering gas by pipelines subject to this chapter in this state, to establish fair and equitable rules and regulations for the full control and supervision of said gas pipelines and all their holdings pertaining to the gas business in all their relations to the public, and to prescribe and enforce rules and regulations for the government and control of such pipelines in respect to their gas pipelines and producing, receiving, transporting, and distributing facilities.

Texas Government Code, §2001.004; Texas Natural Resources Code, §81.052 and §§81.058 - 81.061; Texas Natural Resources Code, §85.065; Texas Natural Resources Code, Title 3, Subtitle D, Chapter 111, and specifically, §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, Title 3, Subtitles A and B, and specifically, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151, are affected by the adopted amendments and new sections.

Statutory authority: Texas Government Code, §2001.004; Texas Natural Resources Code, §81.052 and §§81.058 - 81.061; §85.065; §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151.

Cross-reference to statutes: Texas Government Code, §2001.004; Texas Natural Resources Code, §81.052 and §§81.058 - 81.061; §85.065; §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151.

Issued in Austin, Texas, on April 8, 2008.

§2.1. Informal Complaint Procedure.

(a) Scope and jurisdiction. This section applies to complaints within the Commission's jurisdiction about natural gas purchasing, selling, shipping, transportation, and gathering practices. This section does not apply to matters arising under Texas Utilities Code, Chapter 103, entitled "Jurisdiction and Powers of Municipality," or initiated under Texas Utilities Code, Chapter 104, Subchapter C, entitled "Rate Changes Proposed by Utility," or Subchapter G, entitled "Interim Cost Recovery and Rate Adjustment."

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Common purchaser--Has the same meaning as is given that term in Texas Natural Resources Code, §111.081.

(2) Complainant--A person who submits a complaint to the Commission pursuant to this section.

(3) Director--The director of the Gas Services Division of the Railroad Commission of Texas or the director's delegate.

(4) Gatherer--A person providing gathering service for a fee for a third party.

(5) Gathering service--Use of a pipeline to collect gas and bring it to a common point.

(6) Informal complaint proceeding--The process set out in this section for addressing complaints against entities within the Commission's jurisdiction, including but not limited to natural gas purchasers, sellers, shippers, transporters, and gatherers.

(7) Mediator--The individual who conducts an informal complaint resolution mediation.

(8) Monitor--The Commission employee appointed by the director to manage an informal complaint proceeding and/or assist a mediator who is not a Commission employee in the management of an informal complaint proceeding. A monitor may also be a mediator.

(9) Natural gas purchaser--A person that purchases natural gas.

(10) Natural gas seller or seller--A person that sells natural gas, including but not limited to a producer.

(11) Natural gas utility--Has the same meaning as is given that term in Texas Utilities Code, §101.003 and §121.001.

(12) Participant--A complainant, respondent, monitor, or mediator in an informal complaint proceeding.

(13) Person--An individual, corporation, partnership, joint venture, or other legal entity of any kind.

(14) Respondent--A person who is the subject of a complaint submitted to the Commission pursuant to this section.

(15) Shipper--A person for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(16) Similarly-situated shipper--A shipper that seeks or receives transportation service under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

(A) service requirements;

(B) location of facilities;

(C) receipt and delivery points;

(D) length of haul;

(E) quality of service (firm, interruptible, etc.);

(F) quantity;

(G) swing requirements;

(H) credit worthiness;

(I) gas quality;

(J) pressure (including inlet or line pressure);

(K) duration of service;

(L) connect requirements; and

(M) conditions and circumstances existing at the time of agreement or negotiation.

(17) Transportation service--The receipt of a shipper's natural gas at a point or points on the facilities of a transporter, and re-delivery of a shipper's natural gas by the transporter at another point or points on the facilities of the transporter, or on another person's facilities, including exchange, backhaul, displacement, and other methods of transportation, provided, however, that the term "transportation service" shall not include processing services or the movement of gas to which the transporter has title.

(18) Transporter--Any common purchaser of gas, any gas utility, or any gas pipeline, that provides gas gathering and/or transmission transportation service for a fee.

(c) Policy.

(1) The Commission encourages affordable, expeditious, and fair settlement and resolution of disputes regarding natural gas purchasers, sellers, transporters, and gatherers. The Commission will not tolerate discrimination among similarly situated shippers and sellers as is prohibited by Texas Natural Resources Code, Chapter 111, entitled "Common Carriers, Public Utilities, and Common Purchasers," and Texas Utilities Code, Title 3, Subtitle A, entitled "Gas Utility Regulatory Act," and Subtitle B, entitled "Regulation of Transportation and

Use," and other matters of dispute subject to the Commission's jurisdiction. This section is adopted in furtherance of that policy.

(2) To accomplish the policy set out in this section, Commission employees, acting pursuant to this section, will attempt to facilitate, encourage, and promote resolution and settlement of complaints against natural gas purchasers, sellers, shippers, transporters, gatherers, and other persons subject to the Commission's jurisdiction consistent with the public interest and without lengthy and potentially expensive formal proceedings. The informal complaint procedure is intended to establish a forum for communication, with the goal of achieving mutually acceptable compromise and resolution that is in the public interest.

(3) Filing a complaint pursuant to this section is not a prerequisite to the filing of a formal complaint. If a complaint pertains to the loss of or inability to account for gas, the complaint must be filed pursuant to §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas. The informal complaint resolution process is an optional method for resolving complaints. However, if an informal complaint is filed and the Commission determines that there is sufficient reason to go forward, the respondent shall participate in the process. At any time prior to the mediator's issuance of the confidential memorandum pursuant to subsection (e)(13) of this section, a complainant may unilaterally withdraw an informal complaint or a complainant and respondent may jointly agree to the dismissal of an informal complaint.

(d) General requirements and limitations.

(1) The Commission will not process anonymous complaints under this section.

(2) The communications, records, conduct, and demeanor of the participants in each informal complaint proceeding are confidential and handled in accordance with Texas Government Code, §2009.054, entitled "Confidentiality of Certain Records and Communications."

(3) A mediator shall have completed 40 hours of Texas mediation training that meets the standards of the Texas Alternative Dispute Resolution Procedures Act, as set out in Texas Government Code, §154.052, and must follow the ethical guidelines for mediators adopted by the Alternative Dispute Resolution Section of the State Bar of Texas.

(4) A mediator may be either a Commission employee or a non-Commission employee. If the complainant and respondent submit a written request to the director agreeing to share all costs of mediation, they may retain a non-Commission employee to conduct the mediation. If the complainant and respondent are unable to agree on whether to engage a non-Commission employee as the mediator, or in the absence of a request for a non-Commission employee mediator, the director shall appoint a Commission employee to conduct the mediation. If the mediator is not a Commission employee, then the director shall appoint a Commission employee as a monitor. The monitor will act as a technical advisor to the non-Commission employee mediator and may, at the direction of the non-Commission employee mediator, participate in the informal complaint proceeding. A non-Commission employee mediator shall have the same duties and obligations of a Commission employee mediator and may, in his or her sole discretion, compel the complainant and respondent to provide information pursuant to subsection (e)(10) of this section.

(5) Mediators and monitors shall not communicate with a Commission hearings examiner or a Commissioner about any material or substantive aspect of a complaint or reply filed pursuant to this section.

(6) Each complainant and respondent in an informal complaint proceeding shall cooperate fully in gathering and disclosing information requested by the mediator or monitor and shall participate in good faith in all aspects of the informal complaint proceeding.

(7) A natural gas purchaser, transporter, or gatherer shall not discontinue or deny service to a shipper or seller during the pendency of an informal complaint proceeding in which both are participants unless one of the following reasons applies for discontinuing service:

(A) There is insufficient capacity on the respective facility or facilities, provided, however, that the purchaser, transporter, or gatherer provide any partial capacity that may be available from time to time.

(B) The natural gas does not meet the quality specifications of the purchaser, transporter, gatherer, or downstream processors, pipelines, or customers. However, if the natural gas is flowing under an agreement and, at the impending termination of that agreement, there is sufficient capacity, and non-specification gas is being blended for other shippers or sellers in the area, and the acceptance of such volumes from the shipper or seller will not jeopardize downstream market deliverability of the gas, then the purchaser, transporter, or gatherer shall continue to take the gas until the conclusion of the informal complaint process, charging blending fees applicable to similarly situated shippers.

(C) Continuing to take the natural gas would:

(i) create a safety or environmental risk;

(ii) cause a violation of a safety or environmental regulation or permit; or

(iii) interfere with necessary maintenance and repairs of facilities.

(D) There is no existing contractual agreement in effect on the date the complaint is filed at the Commission as to the price to be paid or fees charged for the production during the pendency of the informal complaint process, provided, however, that the production will be taken if the complainant and respondent agree that the price or fees will be determined at a later date.

(E) There is such good cause as the mediator may determine in the particular case.

(8) Notwithstanding anything in paragraph (7) of this subsection that may be construed to the contrary, that paragraph does not change the rights of the parties that are participating in the informal complaint proceeding that those parties have under state law or any other regulation of the Commission.

(9) A transporter, gatherer, or purchaser shall not discriminate against a shipper or seller because the shipper or seller has, in good faith:

(A) filed an informal complaint at the Commission;

(B) filed a formal complaint at the Commission;

(C) instituted or caused to be instituted at the Commission any enforcement proceeding against a purchaser, transporter, or gatherer based on alleged violations of any rule or statute; or

(D) made inquiry to the Commission as to the facts or circumstances surrounding operation of a purchaser's, transporter's, or gatherer's system.

(10) The Commission may commence an enforcement action, initiated by the director, for failure by the complainant or the respondent to comply with all provisions of the informal complaint proceeding.

(e) Informal complaint process.

(1) An informal complaint proceeding is initiated by filing a complaint with the Commission by:

(A) calling the Commission Helpline at (512) 463-7288 Commission staff will answer calls to the Helpline from 8:00 a.m. to 5:00 p.m. on regular Commission business days. A voice mail system will be in place to receive calls during non-business hours; or

(B) submitting a complaint in writing by:

(i) regular United States mail to the following address: Director, Gas Services Division, P.O. Box 12967, Austin, Texas 78711-2967;

(ii) facsimile transmission (fax) to the following number: (512) 463-7962; or

(iii) internet submission by accessing the following URL: http://www.rrc.state.tx.us/divisions/gs/mos/complaints/icp.html.

(2) Each complaint shall include the following information:

(A) the name of the individual submitting the complaint;

(B) the complainant's name, mailing address, telephone number, and, if applicable, e-mail address and fax number;

(C) the respondent's name, mailing address, telephone number, and if applicable, e-mail address and fax number;

(D) a factual description of the events that are the basis of the complaint, including the onset or duration of such events;

(E) a statement of the current status of negotiations between the complainant and the respondent and a description of any actions the complainant has taken to resolve the dispute;

(F) a statement of the relief sought by complainant; and

(G) all supporting documentation, unless the complaint is made by telephone, in which case the documentation shall be supplied at a later time.

(3) The director shall assign a complaint to a monitor who shall promptly contact the complainant to confirm receipt of the complaint and to obtain any additional relevant and supporting documentation pertaining to the complaint. The monitor shall advise the complainant of its right to have the complaint mediated by a Commission employee or by a non-Commission employee mediator. If the complainant has submitted the complaint by telephone and wishes to pursue the matter, the monitor shall direct the complainant to submit the complaint by e-mail, facsimile, or letter, along with supporting documentation.

(4) After the monitor determines that the complainant has provided all required information, the monitor shall notify the respondent of the complaint by mailing to the respondent, via certified mail, return receipt requested, a copy of the complaint and all supporting documentation. This notification shall include notice to the respondent of its right to have the matter heard by a non-Commission employee mediator pursuant to the agreement of the complainant and the respondent.

(5) The respondent shall reply in writing to both the monitor and the complainant within 14 calendar days from the date of the monitor's notification letter. The respondent's reply shall address the substance of the complaint and either propose a solution or explain why the complaint is incorrect.

(6) The complainant and the respondent will be given 14 calendar days from the date of the respondent's reply to resolve the complaint without the participation of a mediator.

(7) If the complainant and the respondent have not reached an agreement, the monitor shall determine within seven days after expiration of the period allowed for informal resolution in paragraph (6) of this subsection whether either the complainant or the respondent or both want the matter referred to a Commission or non-Commission mediator and shall refer the matter back to the director.

(8) In the event the complainant and respondent agree upon a non-Commission employee mediator, then the monitor shall notify the agreed upon mediator. In the event the complainant and respondent desire to use a non-Commission employee mediator and are unable to agree upon the selection of a non-Commission employee mediator, each party shall each submit the name of its preferred mediator and the preferred mediators so designated shall choose a third mediator who will preside over the process.

(9) In accordance with the procedure set forth in subsection (d)(4) of this section, the director shall appoint a mediator within seven days after receipt of the information in paragraph (7) of this subsection.

(10) The mediator shall, within 14 calendar days after the appointment provided in paragraph (8) of this subsection, review all information received from the complainant and respondent. The mediator may request additional information as the mediator deems necessary. At any time during an informal complaint procedure, the mediator may request and review documents or information the mediator considers necessary in evaluating the complaint. The mediator shall furnish the complainant and respondent with a written summary of all relevant documents and information reviewed. The mediator's summary shall not disclose confidential information.

(11) The monitor shall schedule a mediation meeting with the complainant and respondent, which the mediator shall conduct, to occur within 14 calendar days after the date of the mediator's written summary. The monitor shall promptly notify the complainant and respondent of the date, time and location of the meeting, which may be conducted at the headquarters of the Commission in Austin, Texas; in the Commission's offices in the district in which the complaint arises; or at any other location by agreement of the participants.

(12) The complainant and respondent shall participate in the mediation meeting and undertake in good faith to settle all issues raised in the complaint. The complainant and respondent shall make available during the mediation meeting, in person, representatives who are empowered to make decisions on their behalf.

(13) If the mediation process does not result in a settlement of all issues during the period for mediation provided, after completing the mediation, the mediator shall promptly send a confidential memorandum to the complainant, the respondent, the monitor (unless the monitor is the mediator), and the director that states one or more of the following conclusions, based on the information reviewed by the mediator. The mediator may conclude that:

(A) there are specific actions which, if taken by either the respondent or the complainant or both, could result in resolution of the complaint;

(B) a formal evidentiary hearing may be warranted; or

(C) a formal evidentiary hearing may not be warranted.

(f) A formal evidentiary hearing may be:

(1) initiated by the director as a show cause proceeding; or

(2) requested by either the complainant or the respondent

(g) Internal report. The director shall maintain an internal report of all complaints received.

(1) The report shall be circulated no less often than once every six months to the Commissioners, the executive director, and the general counsel.

(2) The specific points of the participants' discussions and any negotiated resolution shall not be included in this internal report.

(h) Reimbursement. If the participants request that a mediation meeting be conducted at a location other than the headquarters of the Commission in Austin, Texas, pursuant to subsection (e)(11) of this section, the participants shall reimburse the Commission for the Commission's costs related to travel to that location.

§2.5. Informal Complaint Process Regarding Loss of or Inability to Account for Gas.

(a) Scope. This section implements the provisions of Texas Natural Resources Code, §85.065, which applies only to the loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas on or after September 1, 2007. The loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas before September 1, 2007, is governed by the law in effect on the date the gas was tendered.

(b) Policy. The Commission will apply the policies, definitions, and procedures set forth in §2.1 of this title (relating to Informal Complaint Procedure), to the extent they are consistent with this section. If the provisions of §2.1 of this title are inconsistent with this section or are not applicable, the provisions of this section will apply to complaints filed pursuant to Texas Natural Resources Code, §85.065.

(c) Definitions. In addition to the definitions in §2.1 of this title, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accounting--A comprehensive record of the details of the taking or acceptance of a producer's gas and the movement of that gas from the time and place of taking or acceptance to a delivery point by a person who gathers or transports that gas, which may include measurements, quality analyses, processing, and treatment; amounts used for fuel, dehydration, compression, or flaring; liquids extraction or removal of hydrocarbons; quantity of gas redelivered, allocated, or sold for the producer's account; and the physical system used by the person who gathers or transports gas for a producer.

(2) Loss of or inability to account for gas--For purposes of mediating disputes pertaining to issues involving the "loss of or inability to account for gas," the Commission will examine the difference between the amount of gas metered into a system and the amount metered out.

(3) Person who gathers or transports gas--Any common purchaser of gas, gas utility, or taker of natural gas including but not limited to a gas pipeline that provides gas gathering and/or transmission transportation service for a fee or some other compensation. A common purchaser that does not gather or transport gas is not subject to this section.

(4) Producer--A person who owns or operates a well or wells producing oil or gas or both.

(5) Waste--Waste of gas as defined in Texas Natural Resources Code, §85.046.

(d) Explanation of loss of or inability to account for gas. As a prerequisite to filing an informal complaint pursuant to Texas Natural Resources Code, §85.065, and this section, a producer must submit a written request for an explanation of loss of or inability to account for gas to a person who gathers or transports gas for the producer in accordance with the requirements of this subsection.

(1) A producer's request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered by the producer to the person shall be in writing and may ask the person to provide any or all of the following information:

(A) the amount of gas tendered by the producer from each well that has a meter;

(B) a laboratory analysis of the composition and heating value of the gas and other substances tendered by the producer, if such an analysis has been performed;

(C) if available, a schematic drawing of the person's system for gathering or transporting gas that shows:

(i) each meter type;

(ii) the date each meter was last calibrated;

(iii) the accuracy of each meter; and

(iv) all equipment that alters, disposes of, or otherwise consumes any of the gas tendered to the person;

(D) the estimated amount of gas used for fuel, flared, or vented for construction, repair, maintenance, or other operational uses and, if the information is available, the location of that use;

(E) the estimated amount of contaminants or other impurities removed from the gas and the location at which the impurities were removed;

(F) the estimated amount of liquid hydrocarbons and condensate removed from the gas and the location at which the liquid hydrocarbons and condensate were removed;

(G) the estimated amount of gas lost and the location at which the gas was lost;

(H) the estimated amount of gas redelivered by the person, including the amount of gas sold that was allocated to the producer, and the location at which the re-delivery of the gas occurred;

(I) any amount of gas received from the producer by the person that remains unaccounted for; and

(J) any other information the person who gathered or transported the gas considers relevant to the request for explanation of loss of or inability to account for gas.

(2) The producer shall submit the written request to the person who gathers or transports gas for the producer. The producer shall address the request to the contact person at the address shown on the Form P-5 for the person who gathers or transports gas for the producer that is on file with the Commission. If there is no Form P-5 for the person who gathers or transports gas for the producer on file at the Commission, the producer shall use the address on the producer's contract with the person who gathers or transports gas for the producer. The producer shall send its complaint by facsimile or e-mail to the contact person and mail the request using United States Postal Service certified mail, return receipt requested, and shall retain a complete copy of the written request and the returned certified mail receipt.

(3) Not later than the 30th day after the date the person who gathers or transports gas receives the request from the producer, the person shall provide the producer, by mail and facsimile or e-mail, a written explanation of any loss of or inability to account for the gas tendered to the person by the producer. The person shall include in the response any relevant information requested by the producer that is

available to the person and that would be required to be included in an accounting under paragraph (1) of this subsection. For each element of information sought in a request for explanation for which an amount of gas is to be provided, the person who gathered or transported the gas shall state the method by which the amount was determined (measured, allocated, estimated, or other).

(e) Informal complaint. If a producer has submitted a request under subsection (d) of this section to a person who gathers or transports gas for the producer and the person provides an inadequate explanation of any loss of or inability to account for the gas, or fails to provide any explanation of any loss of or inability to account for the gas by the deadline stated in that subsection, the producer may file with the Commission an informal complaint against the person.

(1) An informal complaint may not be filed before the 30th day after the end of the production period covered by the complaint.

(2) An informal complaint shall comply with the requirements of §2.1 of this title and, in addition, shall:

(A) specify the production period covered by the complaint;

(B) state that at least 30 days have elapsed since the end of the production period covered by the complaint;

(C) if the producer metered the volume of gas tendered to the person who gathered or transported the gas:

(i) describe the type of meter used; and

(ii) state the date the meter was last calibrated; and

(D) include a copy of the producer's request to the person who gathers or transports gas for the producer for an explanation of loss of or inability to account for gas and a copy of the returned certified mail receipt.

(3) Not later than the 14th day after the date the complaint is filed at the Commission, the person who gathered or transported the gas shall provide to the producer and the Commission, by mail and facsimile or e-mail, an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint. The person may provide the accounting on a thousand cubic feet or a million British thermal unit basis, as applicable, and shall provide all elements of information listed in subsection (d)(1)(A) - (J) of this section that the Commission determines are necessary to resolve the complaint. In addition, for each element of information for which an amount of gas is to be provided, the person shall state the method by which the amount was determined (measurement, allocation, estimation, or other).

(4) The Commission may grant an extension of time to the person who gathered or transported the gas to provide the accounting required by paragraph (3) of this subsection, but the additional time may not extend beyond the 45th day after the date the informal complaint was filed.

(5) If the person who gathered or transported the gas does not have the information necessary to provide the accounting required by paragraph (3) of this subsection, the person shall provide to the producer and to the Commission, by mail and facsimile or e-mail, a written explanation of the reason the person does not have the information.

(6) If the person who gathered or transported the gas fails to provide the accounting required by paragraph (3) of this subsection and the explanation required by paragraph (5) of this subsection, the Commission shall consider the informal complaint filed by the producer to be valid and shall refer the matter for a formal evidentiary hearing.

§2.7. Administrative Penalties for Failure to Participate.

(a) This section implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(c), which provides that the Commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. This section applies to informal complaint resolutions proceedings filed pursuant to §2.1 of this title (relating to Informal Complaint Procedure), and §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas).

(b) Failure to participate in an informal complaint resolution proceeding may include:

(1) a person who gathers or transports gas not providing, by the 30th day after the date the person receives a request from a producer, a written explanation of any loss of or inability to account for the gas tendered to the person by the producer;

(2) a respondent not replying in writing to both the monitor and the complainant within 14 calendar days from the date of the monitor's notification letter that a complaint has been filed at the Commission;

(3) a respondent's written reply that does not address the substance of the complaint;

(4) a respondent's written reply that does not either propose a solution or explain why the complaint is incorrect;

(5) a person who gathers or transports gas not providing, by the 14th day after the date a complaint is filed at the Commission, the producer and the Commission an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint;

(6) if the Commission has granted an extension of time to the person who gathered or transported the gas to provide the accounting required by §2.5(e)(3) of this title, the failure of the person to respond by the deadline;

(7) if the person who gathered or transported the gas does not have the information necessary to provide the accounting required by §2.5(e)(3) of this title, the failure of the person to provide to the producer and to the Commission a written explanation of the reason the person does not have the information;

(8) the person who gathered or transported the gas not providing either the accounting required by §2.5(e)(3) of this title or the explanation required by §2.5(e)(5) of this title;

(9) a complainant or a respondent not communicating with the other during the 14 calendar days from the date of the respondent's reply to attempt resolve the complaint without the participation of a mediator;

(10) a complainant or a respondent not advising the Commission monitor within seven days after expiration of the period allowed for informal resolution whether the person wants the matter referred to a Commission or non-Commission mediator;

(11) in the event the complainant and respondent desire to use a non-Commission employee mediator and are unable to agree upon the selection of a non-Commission employee mediator, failure of a complainant or a respondent to submit the name of a preferred mediator to work with the other's preferred mediator to choose a third mediator who will preside over the process;

(12) a complainant or respondent not providing documents or information the mediator considers necessary in evaluating the complaint and has requested;

(13) a complainant or respondent not attending a scheduled mediation meeting, absent good cause and prior notice to all participants;

(14) a complainant or respondent not participating in the mediation meeting or not undertaking in good faith to settle all issues raised in the complaint; or

(15) a complainant or respondent not making available during the mediation meeting, in person, representatives who are empowered to make decisions on their behalf.

(c) An administrative penalty imposed under this section may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(d) The amount of any penalty requested, recommended, or finally assessed in an enforcement action brought pursuant to this section will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations of §2.1 or §2.5 of this title, including the number of previous violations;

(2) the demonstrated good faith of the person charged; and

(3) any other factor the Commission considers relevant.

(e) The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the penalty is no longer available.

(f) The remedy provided by this section is cumulative of any other remedy the Commission may order.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 7. GAS SERVICES DIVISION
SUBCHAPTER G. CODE OF CONDUCT

16 TAC §7.7003, §7.7005

The Railroad Commission of Texas adopts new §7.7003, relating to Administrative Penalties and Other Remedies for Discrimination, and new §7.7005, relating to Authority to Set Rates, with changes to the versions published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8407). The new sections implement the authority delegated to the Commission by Texas Natural Resources Code, §81.058(a) and (b), and §81.061, as enacted by House Bill 3273, 80th Legislature (2007) (also referred to as "the Crownover Bill").

Texas Natural Resources Code, §81.058(a) and (b) authorize the Commission, after notice and opportunity for hearing, to impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas, a person described by Texas Natural Resources Code, §81.051(a) or §111.081(a), or any other entity under the jurisdiction of the Commission under the Texas Natural Resources Code that the Commission determines has violated a Commission rule adopting standards or a code of conduct for entities in the natural gas industry prohibiting unlawful discrimination or has unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller, and against a purchaser, transporter, or gatherer of natural gas, if the Commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas.

Texas Natural Resources Code, §81.061, authorizes the Commission to use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding. On the filing of a complaint by a shipper or seller of natural gas, the Commission may set a transportation or gathering rate in a formal rate proceeding if the Commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The Commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

The Commission received comments from Representative Myra Crownover ("Representative Crownover"); Enbridge Energy Company, Inc. ("Enbridge"); Texas Independent Producers and Royalty Owners Association ("TIPRO)"; Crosstex Energy Services, L.P. ("Crosstex"); the Texas Oil and Gas Association ("TXOGA"); the Texas Pipeline Association ("TPA"); and the Texas Alliance of Energy Producers ("the Alliance"). In general, the Alliance and TIPRO favored the proposed rules; Enbridge, Crosstex, TXOGA, and TPA either opposed the rules or offered detailed criticisms and suggested changes or both; and Representative Crownover urged the Commission to be mindful of the spirit of the agreements underlying House Bill 3273.

Some commenters offered general comments on the proposed rules. Representative Crownover asked that the Commission take into consideration that the language used in the rules would convey the spirit of agreement by the two groups that accomplished the passing of this necessary legislation that the proposed rules are based on. The Commission thanks Representative Crownover for her work on House Bill 3273 and for her interest in the proposed rules.

Enbridge stated that no rules are needed to implement the statutes because House Bill 3273 is a procedural statute and rules are not necessary for any party to invoke the statutory provisions or for the Commission to enforce the statutes. If the Commission finds that rules are needed, the rules themselves should not create any substantive obligations not included in the statutory language. Enbridge stated that the proposed rules do make substantive changes, even though those changes are not necessary for the successful implementation of the statutes. Enbridge stated that the proposed rules do not further the goals of the informal complaint process, which was created to resolve complaints in an easy, fast, and inexpensive manner. House Bill 3273 was designed to make the informal complaint

process easier to use by allowing the parties to choose their own arbitrator and hold mediations outside of Austin; Enbridge asserted that the bill also attempted to make the process more effective by including all types of pipelines, requiring participation, prohibiting retribution, and authorizing the Commission to set market-based rates instead of cost-of-service rates. The statute was designed to be neutral as to the issues in dispute and to be fair to all participants, but the proposed rules have the opposite effect. Enbridge stated that House Bill 3273 was intended to result in a process to determine issues, not result in a list of indictments without facts or explanation. The proposed rules are not impartial and fair, and only increase the amount of time, money, and animosity involved in complaints.

Enbridge also commented that the Crownover Bill increased the number of gathering systems subject to potential Commission rate regulation, but the bill also authorized the use of market-based rates to decrease the time and money spent on rate proceedings and to result in a rate that actually reflects the market. The proposed rules would use market-based rates only where the Commission determines there is "competition." Enbridge asserted that the benefits of the statute have been limited while the burdens have been increased, an effect contrary to the bill's purpose. Enbridge had hoped that any rules would make the Commission dispute resolution process better, not worse. The Commission can accomplish that goal by adopting rules, if rules are needed, that respect the agreements reached in the legislative process rather than rules which make substantive changes to those statutes and result in a process which creates greater costs and more burdensome proceedings.

The Commission disagrees with Enbridge that no rules are needed. The Commission finds that a comprehensive set of rules provides the necessary clarity and direction to properly administer the statute as it was intended. House Bill 3273 did not create the Commission's informal complaint process (the Commission's rule §2.1 did that), but it did delegate additional authority to the Commission with respect to informal complaints, most significantly the authority to assess administrative penalties against certain entities that have been determined to have engaged in prohibited conduct. While much of the language in the new rules tracks almost verbatim the wording in the statutory provisions enacted by House Bill 3273, nothing in that bill speaks specifically to the mechanical procedures that are an important component of the Commission's management of its administrative procedures, including the informal complaint resolution process. The Commission finds that a comprehensive set of rules provides the necessary clarity and direction both for those entities required to comply with the statutes and Commission rules and for Staff to properly administer the statutes. Further, since 1975, it has been a requirement in state law that an agency must adopt rules of practice stating the nature and requirements of all available formal and informal procedures (Texas Government Code, §2001.004). The Commission finds that the new rules are both necessary and within the authority of the Commission to adopt.

TXOGA, based on its eventual support for the final language in the Crownover Bill, commented that it is critical that the proposed rule implementing the bill closely follow the provisions in the bill and avoid losing the mutually-agreed industry balance achieved through those provisions. TXOGA asserted that the various problems highlighted by some in the industry will be greatly helped by the increased use of the Commission's informal complaint process, which gives all involved a chance to tell their side of the issue and allow increased communication to solve many of these problems. TXOGA supports the use of the informal complaint process as the most effective way for the Commission to better evaluate the nature of these problems and give the Commission experience to better report findings and formulate future rules as needed.

The Commission agrees with TXOGA the increased use of the Commission's informal complaint resolution procedures would be an effective method by which disputes can be resolved.

TIPRO commended the Commission on its interpretation of House Bill 3273 and its reliance on statutory language whenever possible. TIPRO has consistently commented that rules should incorporate language directly from statutes whenever possible, and asserted that the published rules meet that criterion and rely directly on statutory language. Having said that, TIPRO recognized that sometimes the authority granted by legislation inherently requires interpretation by an agency for implementation purposes; the agency must often include detailed language specifying its exact procedures to ensure that the rules are applied consistently and that entities subject to the rule know what to expect and can plan accordingly.

TIPRO stated that it was necessary for the Commission to include guidelines and examples in the rules that were not necessary in the legislation itself. As the only producer's association that was present for and a direct party to negotiations on House Bill 3273, TIPRO commented that the guidelines and examples of "unreasonable discrimination" and "prohibited discrimination" included in these rules are fully in keeping with the negotiations of the legislation. TIPRO strongly supported the proposed rules as published in the *Texas Register.*

Specifically, TIPRO stated that the use of the terms "unreasonable discrimination" and "prohibited discrimination" was a compromise as a means of defining "retaliation." Protecting producers from retaliation for filing an informal complaint was a priority of the Commission's Natural Gas Pipeline Competition Study Advisory Task Force and is stated throughout the Task Force's report that was adopted by the Commission. During legislative negotiations, comprehensively defining acts of "retaliation" proved impossible and there was agreement that any new definition of the term "retaliation" would generate potentially years of challenges before becoming an accepted legal definition. Therefore, the parties agreed to use the existing terms "unreasonable discrimination" or "prohibited discrimination" to describe actions and behaviors. TIPRO also states that the parties agreed that the definitions of these terms would be confined to status quo definitions, references, and case law that exist at this time, rather than expanding it through this particular legislation. Those references are found in Commission rules §§7.115, 7.7001, and 7.7003(d)(1) - (13) and (e)(1) - (5) and therefore, in TIPRO's view, are appropriate for the Commission to include in the rule.

TIPRO said the test for "retaliation" is a multi-part one: The Commission must check to see if the behavior falls under "unreasonable discrimination" or "prohibited discrimination" and that the behavior occurred in response to an informal complaint being filed. Simply engaging in "unreasonable discrimination" or "prohibited discrimination" is already an offense that carries a fine. The Commission must distinguish that same behavior in this specific circumstance to trigger the new, separate penalty. The Task Force, the Commission, the Legislature, and the parties to the negotiations understood the need for the new, separate penalty as a way of protecting filers of informal complaints. The parties discussed factors to determine the second part of the test, including the action occurring within reasonable time periods linked to

the informal complaint process and whether or not the respondent took the action against a filer specifically or as part of a broader, non-retaliatory business decision. The parties agreed not to attempt such a laundry list in the statute itself and recognized that the Commission would have to exercise its discretion in making these determinations. TIPRO found that the proposed language in §7.7003(i)(1) - (5) is in keeping with that agreement and relies on current laws and rules while preserving flexibility for the Commission.

The Commission agrees with TIPRO's comments regarding the need for rules that specify the exact procedures to ensure that the rules are applied consistently and that entities subject to the rule know what to expect and can plan accordingly. The Commission also agrees with TIPRO's characterization of the House Bill 3273 negotiations with respect to use of the terms "unreasonable discrimination" and "prohibited discrimination" rather than "retaliation" in House Bill 3273.

TPA noted that pipeline companies are not the only parties who will have to comply with the proposed rules; the Crownover Bill applies to any entity which gathers or transports natural gas. The statute and the Commission's rules apply to non-utility gathering lines, such as those owned by producers and others not generally thought of as "pipelines." TPA stated that House Bill 3273 was the product of four years of legislative disputes, statewide Railroad Commission meetings, and intense negotiations during the legislative session before an agreement was finally reached as to the bill's language. Industry members, representatives of associations representing industry groups, members of the legislature and their staffs, and Commission staff all participated. TPA states that what is not in the bill was as intensely negotiated as what is in the bill, and when agreement was reached, all parties involved asked the legislature to pass the language as negotiated with no changes. The legislature did so, and TPA asked the Commission to do the same and not change the agreements reached by adding any provisions that were not agreed upon or taking out any provisions that were agreed upon. TPA stated that the Crownover Bill was designed to create a procedure to resolve disputes, and the statutory provisions do not attempt to pre-judge or determine the results, but create a process by which determinations can be made. TPA commented that the proposed rule does far more than implement the statute--it decides certain issues before any hearing is ever held or any evidence taken.

TPA also commented that the proposed rules seem to limit the applicability of one of the most innovative statutory provisions--the ability of the Commission to set market-based rates. One of the major benefits of the provision is to allow the parties to avoid expensive and time-consuming cost-of-service proceedings, especially for gatherers and others who have neither the expertise nor the financial resources to support cost-of-service ratemaking. TPA stated that the proposed rule appears to predetermine that the Commission will use market-based rates only after a competition study has been done and the Commission has determined that competition exists. TPA questioned this apparent limit on the use of market-based rates and asked why the Commission would limit the power given to it by the legislature or why the Commission believes it needs a rule to predetermine when it will exercise its legislative authority to use market-based rates. TPA stated that the additional provisions in the rules were not discussed during the legislative negotiations and were seen for the first time when the Commission considered the rules for proposal and publication. TPA stated that some of the changes and additions might have been agreed upon, but other clearly would not have been. TPA asserted that inclusion of those provisions in the final rule would make substantive changes to the bargain created by negotiation and legislative action after years of disputes.

The Commission agrees in part and disagrees in part with TPA's comments. The Commission disagrees that rules that implement statutory authority should have only statutory wording. In some instances, the rule text is provided as a ready reference for statutory provisions. For example, Texas Natural Resources Code, §81.058, authorizes the Commission, after notice and opportunity for hearing, to impose an administrative penalty against specific entities if the Commission determines an entity has violated a Commission rule adopting standards or a code of conduct. Commission rule §7.115 contains the definition of "similarly situated shipper" which is used in the Commission's code of conduct. These existing rule provisions contain the elements that the Commission will use to evaluate allegations that an entity has engaged in unreasonable discrimination or prohibited discrimination. The Commission agrees with TPA that some provisions need to be clarified, and the Commission has incorporated those clarifying amendments in the rules as adopted.

Crosstex fully supported the comments of TPA. The Commission disagrees with Crosstex, for the reasons set forth in the Commission's response to TPA's comments.

New §7.7003 implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(a) and (b). The terms used in this section have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions). In subsection (c), the scope of the rule is set forth.

The Commission received no comments on §7.7003(a) through (c), but adopts one clarifying change in subsection (b) to correct the title of §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas), which the Commission is adopting in a separate rulemaking proceeding.

The Commission adopts without change §7.7003(d), which provides that, in determining whether an entity has violated §7.7001 or has unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller, the Commission will consider the factors set forth in the definition of "similarly situated shipper" in §7.115 of this title (relating to Definitions). In determining whether conditions of service are the same or substantially the same, the Commission will evaluate the significance and degree of similarity or difference in relevant conditions between sellers that are material and probative, including, but not limited to service requirements; location of facilities; receipt and delivery points; length of haul; quality of service (firm, interruptible, etc.); quantity; swing requirements; credit worthiness; gas quality; pressure (including inlet or line pressure); duration of service; connect requirements; and conditions and circumstances existing at the time of agreement or negotiation.

The Alliance referred to a list of "pipeline defenses" in subsection (d)(1) - (13) as factors that would have to be addressed in any discrimination complaint proceeding. The Alliance found it problematic that the rule requires all 13 factors to be addressed in every case, regardless of the degree to which they may or may not be relevant to the situation at hand. This means the Commission would go beyond the statute and create a rule that is virtually impossible to litigate or enforce. This would result in a process so complex and so expensive that potential complainants will largely conclude it is futile to seek redress at the Commission.

Multiplying potential defenses, and then making their consideration mandatory in every case, is a recipe to discourage complaints and assistance from the Commission. The Alliance recognizes that the enumerated factors mirror those found in the definition of "similarly-situated shipper" in §7.115 of this title and §7.7001 of this title (relating to Natural Gas Transportation Standards and Code of Conduct). The Alliance says this has long been a problem as evidenced by the paucity of complaints even as the abuses of monopoly power have multiplied in the last 10 years since the adoption of §7.7001. House Bill 3273 did not require the Commission to specify a many-point laundry list of potential defenses for the pipelines and make evaluation of each and every one in every case. The Alliance urged the Commission to delete the subsection (d) list of pipelines' defenses.

The Commission disagrees with this comment; consideration of all 13 factors is expressly not mandatory. House Bill 3273 focused on conduct that constitutes either unreasonable discrimination or prohibited discrimination, and referred specifically to violations of a Commission rule adopting standards or a code of conduct for entities in the natural gas industry prohibiting unlawful discrimination. Specifically, the Commission's code of conduct rule, §7.7001, and the terms used in it, which are defined in §7.115, are necessarily part of the analysis of allegations of claims of unreasonable or prohibited discrimination. Whether all 13 factors in the definition of "similarly situated shipper" are relevant in any particular matter will be evaluated on a case-by-case basis; the rule language specifically provides that the Commission will evaluate the significance and degree of similarity or difference in relevant conditions between sellers that are material and probative. The Commission does not intend to evaluate information that is irrelevant, immaterial, or non-probative.

The Commission also disagrees with the Alliance regarding any inferences that can be drawn from the paucity of complaints under the Commission's code of conduct rule. The Commission's Natural Gas Pipeline Competition Study Advisory Task Force looked at some of the reasons there were so few complaints filed with the Commission, despite having an informal complaint process available for ten years. One factor was that so few producers were aware of the informal complaint process; another was the expense and difficulty for some very small producers to essentially shut down their offices and travel to Austin for the mediation meetings. The Commission addressed these concerns in adopting §2.1, the informal complaint resolution rule, in February 2007.

In §7.7003(e), the Commission proposed that in determining whether an entity has engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas, the Commission will consider the time elapsed between the conclusion of the informal or formal complaint filed by a shipper or seller of natural gas and the conduct alleged to constitute prohibited discrimination; whether other shippers or sellers of natural gas have been offered the same or similar rates, terms, and conditions of service; the timing of those offers; and whether those offers were accepted; whether a shipper or seller of natural gas has been refused service under rates, terms, and conditions that are the same or similar as other shippers or sellers of natural gas; whether a shipper or seller has had service terminated without cause; and whether a shipper or seller of natural gas has experienced damage or destruction of property by a person that purchases, transports, or gathers the shipper's or seller's gas that results in lost revenue, lost production capability, or other economic harm.

TXOGA recommended deleting §7.7003(e)(1) - (5) and stated that this list of items deemed to constitute "retribution" was not discussed, debated, nor included in the Crownover Bill and should be heard as part of a case-by-case factual review through the Commission's complaint process. If the Commission develops a substantive record based on complaint proceedings and evidentiary hearings, then TXOGA might support more specific definitions of unreasonable or prohibited discrimination.

Similarly, Enbridge commented that the proposed rules decide, before any hearing is actually held or any specific allegations are actually known, that the Commission will consider a list of items contained in §7.7003(e) to determine if retribution has occurred.

TPA also stated that §7.7003(e) should be deleted because it establishes minimum evidentiary showings related to the determination of "retribution" without regard to the actual facts in each case. The "retribution" issue was one of the most important raised by the statewide meetings and the Competition Committee. Although definitions of retribution were presented in legislative negotiations, none were agreed upon. Certainly the laundry list of factors to be considered in §7.7003(e)(1) - (5) would have been carefully debated if it had been presented. Some will no doubt think the list is incomplete, while others will think it includes items which do not show either the absence or presence of discrimination. All would have to agree that the list was not part of the negotiations on these bills. Deciding what evidence will be considered prior to a hearing is sure to give one party or the other an advantage. Subsection (e) should be deleted.

The Commission disagrees with comments that §7.7003(e) establishes minimum evidentiary showings related to the determination of retribution without regard to facts in each case and with the comments suggesting that this subsection should be deleted. The rule nowhere uses the term "retribution." In the negotiations associated with House Bill 3273, the term "prohibited discrimination" was agreed upon in lieu of the term "retaliation." The Commission is obligated to enforce the Natural Resource Code provisions enacted by House Bill 3273, and finds that establishing guidance for affected persons with respect to the kinds of factual showings that could be relevant to an analysis of claims of prohibited discrimination is sound public policy. Nevertheless, the Commission recognizes that paragraphs (1) - (5) in proposed new §7.7003(e) could be too restrictive and could be misinterpreted as limiting the Commission's ability to evaluate claims of prohibited discrimination to only those listed factors. The Commission's goal is to maintain discretion and flexibility and to consider all relevant and material facts. Therefore the Commission adopts new §7.7003(e) without the specific components proposed in paragraphs (1) - (5). However, the Commission also notes that those paragraphs offer useful examples of the kinds of inquiries that are likely to elicit relevant and material facts, to wit: the time elapsed between the conclusion of the informal or formal complaint filed by a shipper or seller of natural gas and the conduct alleged to constitute prohibited discrimination; whether other shippers or sellers of natural gas have been offered the same or similar rates, terms, and conditions of service; the timing of those offers; and whether those offers were accepted; whether a shipper or seller of natural gas has been refused service under rates, terms, and conditions that are the same or similar as other shippers or sellers of natural gas; whether a shipper or seller has had service terminated without cause; and whether a shipper or seller of natural gas has ex-

perienced damage or destruction of property by a person that purchases, transports, or gathers the shipper's or seller's gas that results in lost revenue, lost production capability, or other economic harm.

In subsection (f), the Commission adopts without change the restatement of Texas Natural Resources Code, §81.058(d), which provides that an administrative penalty imposed under this section (of the statute) may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

In subsection (g), the Commission adopts without change that if the Commission determines after notice and opportunity for hearing that an entity has engaged in prohibited discrimination for which a penalty may be imposed under this section, the Commission may issue any order necessary and reasonable to prevent the discrimination from continuing, including an order setting rates pursuant to §7.7005 of this title, relating to Authority to Set Rates.

In subsection (h), the Commission adopts without change that the remedy provided by this section is cumulative of any other remedy the Commission may order.

In subsection (i), the Commission proposed examples of conduct that "would be" considered to be unreasonable or prohibited discrimination, but did not provide an exhaustive listing of all conduct that the Commission would interpret as constituting discrimination; the examples were illustrative only. In all situations, the Commission will apply the relevant statutory and rule provisions to achieve the intended statutory purposes of preventing or remedying undue discrimination and ensuring that natural gas transportation and gathering services are provided at rates and under terms and conditions that are just and reasonable.

TIPRO commented that the proposed language in §7.7003(i)(1) - (5) is in keeping with that agreement and relies on current laws and rules while preserving flexibility for the Commission.

The Alliance strongly endorsed the inclusion of the examples of prohibited conduct in subsection (i) because this approach creates a rule that can be enforced, but suggests that subsection (i)(3) should be reworded to make clear its intended application.

Enbridge commented that the proposed wording in §7.7003(i) assumes retribution has occurred without explanation of the reasoning behind that decision and that certain practices are prohibited discrimination without any facts being determined and without any explanation being heard.

TXOGA recommended deleting §7.7003(i)(1) - (5), stating that these provisions were never part of the Crownover Bill. These types of "fact-finding" should be determined based on a hearing of all the facts. If the Commission develops a substantive record based on complaint proceedings and evidentiary hearings, then TXOGA might support more specific definitions of unreasonable or prohibited discrimination.

TPA commented that §7.7003(i)(1) - (5) should be deleted because it makes certain acts "de facto" discrimination. The list of such acts in the proposed rule is not part of the statute. While the proposed rule claims that the list is based on prior Commission interpretation and application of various statutes, the preamble provides no citations for these interpretations and applications. Since House Bill 3273 created a new penalty for discrimination, it is difficult to understand how the Commission could have made the decisions related to such items without a hearing and without having any actual facts to examine. The Advisory Committee established by the Commission recommended that the Commission define "unreasonable discrimination." TPA states that the Commission already has a definition of "discrimination" in §7.115 of this title, which already prohibits treatment which "unreasonably disadvantages or prejudices similar-situated" parties. Whether something is unreasonable depends on the facts of the case. TPA does not believe that the Commission has in fact construed the existing statutes and decided that the conduct on the list would be considered discrimination even before any hearing has been held. Referring to subsection (i)(3), TPA stated that it would be prohibited discrimination to have shared employees offering transportation services; affiliated companies often utilize the skills of an employee for more than one company. Yet TPA says the rule does not explain why the Commission has concluded that such an arrangement is prohibited discrimination. Whether discrimination exists is a question of fact and the facts of each case will have to be heard to make such a determination. The list in subsection (i) was not, and could not, have been agreed to in the bill. The Commission should not decide facts before a hearing is held and should not adopt the proposed list of pre-determined results contained in subsection (i).

The Commission's goal is to maintain discretion and flexibility and to consider all relevant and material facts. Therefore the Commission adopts new §7.7003(i) without the examples proposed in paragraphs (1) - (5). Subsection (i) is adopted with only the statement "In all situations, the Commission will apply the relevant statutory and rule provisions to achieve the intended statutory purposes of preventing or remedying undue discrimination and ensuring that natural gas transportation and gathering services are provided at rates and under terms and conditions that are just and reasonable." However, the Commission notes that paragraphs (1) - (5) in the proposed version of §7.7003(i) were examples of informal complaints that have been filed with the Commission over the past 11 years. These are examples of conduct that, depending on the facts in evidence, could be considered unreasonable or prohibited discrimination, and thus may be instructive:

(1) a gatherer or transporter that limits transportation on its system to only its affiliates;

(2) a gatherer or transporter that shares market information, such as gas use, names of contact people, contract terms, etc., with an affiliate shipper without simultaneously sharing the same information with other similarly situated shippers;

(3) an officer or employee of a gatherer or transporter who represents any other affiliate entity involved in negotiating and providing supply and transportation service to a customer and shares competitive information between these affiliates;

(4) a gatherer or transporter that attempts to prohibit or discourage connection to its pipeline system by using or quoting preferential charges for taps and meters for certain shippers and not offering the same charges to all shippers; and

(5) a gatherer or transporter that threatens a shipper or seller with removal of meter facilities or refusal of service if the shipper or seller seeks competitive supply or transportation options.

No facts are established or found in the rule; all matters of fact will be evaluated in an evidentiary hearing, which is subject to due process protections. Other fact situations not given as examples above may, after notice and an opportunity for an evidentiary hearing, may be found to constitute unreasonable or prohibited discrimination, based on the Commission's interpre-

tation and application of provisions in Texas Natural Resources Code, Title 3, Subtitles A, B, and D, and Texas Utilities Code, Title 3, Subtitles A and B, and the Commission rules adopted pursuant to those statutes.

New §7.7005 implements the authority of the Commission pursuant to Texas Natural Resources Code, §81.061, as enacted by House Bill 3273, 80th Legislature (2007). The Commission received no comments regarding subsections (a) through (e) and adopts those subsections without change, except for subsection (b), in which the Commission adopts a correction to the title of §2.5 of this title.

New subsection (b) provides that the terms used in this section have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions).

New subsection (c) declares that, except for rates established under Texas Utilities Code, Chapter 103, or Texas Utilities Code, Chapter 104, Subchapters C or G, the Commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

New subsection (d) provides that on the filing of a complaint by a shipper or seller of natural gas, the Commission may set a transportation or gathering rate in a formal rate proceeding if the Commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The Commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

New subsection (e) states that the Commission may use a cost-of-service method or a market-based method in setting a rate pursuant to this section in a formal rate proceeding conducted after notice and an opportunity for hearing in accordance with the Commission's rules of practice and procedure in 16 Texas Administrative Code, Chapter 1.

New subsection (f) provides that in determining whether to use a cost-of-service method or a market-based method to set rates for transportation or gathering service, the Commission will consider all relevant factors including but not limited to whether there is effective competition in the provision of transportation or gathering services for which rates are at issue.

The Alliance supported §7.7005 as written and commends the language in subsection (f) that recognizes that "whether there is effective competition" will be an important factor in determining whether a "market-based method" is appropriate in a given situation.

TXOGA stated that the Commission should retain full authority to review the specific facts of the situation under consideration and at that time decide which would be most appropriate, either a market-based or cost-of-service based rate method to determine rates. The Commission's authority to use either rate method should not be predicated on the completion of or lack of a competition study for the particular situation under consideration.

TPA commented that proposed §7.7005(f) should not limit the application of market-based rates to cases where the Commission determines that competition exists. The statute gave the Commission the authority to set market-based rates in all cases except for city gate and distribution rates. Subsection (f) of the rule seems to say that market-based rates will be used only where there is competition. The bill did not put any restrictions on situations where market-based rates can be set by the Commission and neither should the rule. The proposed rules provide that the Commission will decide to use market-based rates after it has considered all relevant factors but only lists one factor--competition. Thus, the proposed rule appears to limit the application of the rule to situations where there has been a competition study or some other factual determination that competition exists. If the provision is intended to mean that the Commission will consider whether competition exists but that it may decide to exercise the authority whether or not competition exists, then this provision in the proposed rule is meaningless. The only apparent reason for the language is to limit the use of the Commission's authority to cases where a competition study has been done. Clearly that kind of limit is not in the statute. If the Commission wanted its authority to be limited it could have said so during the legislative process. If the Commission has now decided that it will only use its new authority in limited circumstances it should explain why it has decided to do so. If the language is not intended to limit the Commission, it should simply be dropped.

The Commission agrees in part and disagrees in part with all comments on §7.7005(f). The Commission agrees that the legislation did not place any restriction on when the Commission could apply a market-based method for setting rates. Subsection (f) might appear to limit the application of the rule to situations where there has been a competition study or some other requirement that proves up that competition exists before the market-based rate method can be used. Therefore the Commission adopts §7.7005(f) without the specific wording "including but not limited to whether there is effective competition in the provision of transportation or gathering services for which rates are at issue." However, competition in the provision of transportation or gathering services for which rates are at issue may be one of the relevant factors that the Commission may consider pursuant to §7.7005(f).

The Commission adopts the new sections pursuant to Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; Texas Natural Resources Code, §81.052, which gives the Commission the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, and Texas Natural Resources Code, §§81.058 - 81.061, as enacted by House Bill 3273, 80th Legislature (2007). Among other things, these new provisions authorize the Commission, after notice and opportunity for hearing, to impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. An administrative penalty imposed under Texas Natural Resources Code, §81.058, may not exceed $5,000 a day for each violation, but each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section. The remedy provided by this section is cumulative of any other remedy the Commission may order. Texas Natural Resources Code, §81.059(b), provides that if the parties request that an informal dispute resolution mediation be conducted at a location other than the headquarters of the

Commission in Austin, the parties must reimburse the Commission for the Commission's costs related to travel to those other locations.

The Commission also adopts the new sections pursuant to Texas Natural Resources Code, Title 3, Subtitle D, Chapter 111, and specifically Texas Natural Resources Code, §111.083, which requires common purchasers, as defined in Texas Natural Resources Code, §111.081(a)(2), to purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the Commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable to common purchasers of oil; Texas Natural Resources Code, §111.086, which requires common purchasers to purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state; Texas Natural Resources Code, §111.087, which prohibits common purchasers from discriminating between or against production of a similar kind or quality in favor of its own production; and Texas Natural Resources Code, §111.090, which authorizes the Commission to adopt rules that may be necessary to prevent discrimination.

The Commission also finds authority for the rules in Texas Utilities Code, Title 3, Subtitle A, which authorizes the Commission to regulate gas utilities, to protect the public interest inherent in the rates and services of gas utilities, and to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities; Texas Utilities Code, §102.003, which grants the Commission the power to require that gas utilities report to the Commission information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of Title 3, Subtitle A (the Gas Utilities Regulatory Act); to require the filing with the Commission of, among other things, a copy of a contract or arrangement between a gas utility and an affiliate or a report filed with a federal agency or a governmental agency or body of another state; and to require that a contract or arrangement between a utility and an affiliate that is not in writing be reduced to writing and filed with the Commission; Texas Utilities Code, §104.003, which states that it is the duty of the Commission to ensure that every rate made, demanded, or received by any gas utility, or by any two or more gas utilities jointly, is just and reasonable, and directs that rates may not be unreasonably preferential, prejudicial, or discriminatory, but must be sufficient, equitable, and consistent in application to each class of consumers; Texas Utilities Code, §104.004, which prohibits a gas utility, as to rates or services, from making or granting any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage, and from establishing and maintaining any unreasonable differences as to rates of service either as between localities or as between classes of service; and Texas Utilities Code, §104.007, which prohibits gas utilities from discriminating against any person or corporation that sells or leases equipment or performs services in competition with the gas utility, and from engaging in any other practice that tends to restrict or impair that competition.

Additional authority for the new rules is found in Texas Utilities Code, Title 3, Subtitle B, and specifically, Texas Utilities Code, §121.104, which prohibits pipeline public utilities from discriminating in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in their charges therefor, and from directly or indirectly charging, demanding, collecting or receiving from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; and Texas Utilities Code, §121.151, which directs the Commission to establish and enforce rules for transporting, producing, distributing, buying, selling, and delivering gas by pipelines subject to this chapter in this state, to establish fair and equitable rules and regulations for the full control and supervision of said gas pipelines and all their holdings pertaining to the gas business in all their relations to the public, and to prescribe and enforce rules and regulations for the government and control of such pipelines in respect to their gas pipelines and producing, receiving, transporting, and distributing facilities.

Texas Government Code, §2001.004; Texas Natural Resources Code, Title 3, Subtitle A, Chapter 81, and specifically, §81.052 and §§81.058 - 81.061; Texas Natural Resources Code, Title 3, Subtitle D, Chapter 111, and specifically, §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, Title 3, Subtitles A and B, and specifically, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151, are affected by the adopted new sections.

Statutory authority: Texas Natural Resources Code, §81.052 and §§81.058 - 81.061; §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151.

Cross-reference to statutes: Texas Natural Resources Code, §81.052 and §§81.058 - 81.061; §§111.083, 111.086, 111.087, and 111.090; and Texas Utilities Code, §§102.003, 104.003, 104.004, 104.007, 121.104, and 121.151.

Issued in Austin, Texas, on April 8, 2008.

§7.7003. Administrative Penalties and Other Remedies for Discrimination.

(a) This section implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(a) and (b), as enacted by House Bill 3273, 80th Legislature (2007).

(b) Terms used in this section shall have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions).

(c) The Commission, after notice and opportunity for hearing, may impose an administrative penalty against:

(1) a purchaser, transporter, gatherer, shipper, or seller of natural gas; a person described by Texas Natural Resources Code, §81.051(a) or §111.081(a); or any other entity under the jurisdiction of the Commission under the Texas Natural Resources Code that the Commission determines has:

(A) violated §7.7001 of this title (relating to Code of Conduct) or any other Commission rule adopting standards for entities in the natural gas industry prohibiting unlawful discrimination; or

(B) unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller; and

(2) a purchaser, transporter, or gatherer of natural gas if the Commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas.

(d) In determining whether an entity has violated §7.7001 of this title or has unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller, the Commission will consider the factors set forth in the definition of "similarly situated shipper" in §7.115 of this title (relating to Definitions). In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance and degree of similarity or difference in relevant conditions between sellers that are material and probative, including, but not limited to, the following:

(1) service requirements;

(2) location of facilities;

(3) receipt and delivery points;

(4) length of haul;

(5) quality of service (firm, interruptible, etc.);

(6) quantity;

(7) swing requirements;

(8) credit worthiness;

(9) gas quality;

(10) pressure (including inlet or line pressure);

(11) duration of service;

(12) connect requirements; and

(13) conditions and circumstances existing at the time of agreement or negotiation.

(e) In determining whether an entity has engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the Commission against the person relating to the person's purchase, transportation, or gathering of the gas, the Commission will consider all relevant and material facts.

(f) An administrative penalty imposed under this section may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(g) If the Commission determines after notice and opportunity for hearing that an entity has engaged in prohibited discrimination for which a penalty may be imposed under this section, the Commission may issue any order necessary and reasonable to prevent the discrimination from continuing, including an order setting rates pursuant to §7.7005 of this title (relating to Authority to Set Rates).

(h) The remedy provided by this section is cumulative of any other remedy the Commission may order.

(i) In all situations, the Commission will apply the relevant statutory and rule provisions to achieve the intended statutory purposes of preventing or remedying undue discrimination and ensuring that natural gas transportation and gathering services are provided at rates and under terms and conditions that are just and reasonable.

§7.7005. Authority to Set Rates.

(a) This section implements the authority of the Commission pursuant to Texas Natural Resources Code, §81.061, as enacted by House Bill 3273, 80th Legislature (2007).

(b) Terms used in this section shall have the same meaning as in §2.1 of this title (relating to Informal Complaint Procedure); §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas); and §7.115 of this title (relating to Definitions).

(c) Except for rates established under Texas Utilities Code, Chapter 103, or Texas Utilities Code, Chapter 104, Subchapters C or G, the Commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

(d) On the filing of a complaint by a shipper or seller of natural gas, the Commission may set a transportation or gathering rate in a formal rate proceeding if the Commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The Commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

(e) The Commission may use a cost-of-service method or a market-based method in setting a rate pursuant to this section in a formal rate proceeding conducted after notice and an opportunity for hearing in accordance with the Commission's rules of practice and procedure in 16 Texas Administrative Code, Chapter 1 (relating to Practice and Procedure).

(f) In determining whether to use a cost-of-service method or a market-based method to set rates for transportation or gathering service, the Commission will consider all relevant factors in a formal rate proceeding.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2008.

TRD-200801869
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: April 28, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 475-1295

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.60, 70.103

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to 16 TAC §§70.10, 70.60, and 70.103, regarding the industrialized housing and buildings (IHB) program, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1215) and the text of the rules will not be republished.

The purposes of the amendments are to minimize conflicts of interest for third parties participating in certification inspections and to streamline the process for approving alternative materials and methods of construction. The substance of these rule changes was recommended by the Industrialized Building Code Council ("Council") at its meeting on November 13, 2007.

Section 70.10 is amended to define certain acronyms that are used in amendments to §70.103, related to the Council's ap-

proval of alternative materials and methods of construction. Additionally, an unnecessary reference to an address for the International Code Council, Inc. is eliminated.

In §70.60(a) a sentence is deleted concerning the prohibition on the certification team leader being personnel of the third party inspection agency responsible for regular in-plant inspections of the manufacturer or the design review agency responsible for review of the manufacturer's design package. That sentence is moved to new subsection (b), and the words "an employee" are substituted for "personnel." This change clarifies that the prohibition applies only to employees of the third party inspection agency or design review agency. New language is added to subsection (b) to prohibit agencies and team members from soliciting, offering, or agreeing to provide future design review or in-plant inspection services for the manufacturer prior to the manufacturer completing all certification requirements. The prohibition does not apply to the manufacturer's current third party inspection agency or design review agency or to a team member that is employed by the manufacturer's current third party inspection agency or design review agency.

Under the current rule, the Department may use third parties, individuals who are not Department employees, as personnel for the certification teams that perform certification inspections of IHB manufacturing facilities. These individuals are typically employed by or associated with one of two types of entities: third party inspection agencies that perform regular, in-plant inspections of IHB manufacturers or design review agencies that review the design packages of IHB manufacturers. In either case, a potential conflict of interest exists for the individual on the certification team. The agency for whom the individual works may be seeking the business of the manufacturer undergoing the certification inspection, either to perform regular, in-plant inspections for the manufacturer or to perform design review services. The Department has a strong interest in ensuring that such potential business opportunities do not unduly influence the members of the certification team. The Council has expressed concern about such potential conflicts of interest. The amendment addresses these concerns by temporarily restricting the team members and agencies providing those team members from soliciting business from that manufacturer. This approach should protect against conflicts of interest while not significantly interfering with agencies' ability to acquire new business.

Section 70.60(e)(9) is amended to specify that the plant certification report must be signed by an authorized Department employee, rather than the certification team leader. This change is necessary because the certification team leader might not always be a Department employee, and the Department needs to retain control over the issuance of the report and the final approval of whether the manufacturer meets certification requirements.

Section 70.103(b) is amended to allow manufacturers or builders the additional option of submitting documentation of alternate materials and methods of construction electronically. New subsection (c) specifies two instances in which alternate materials or methods of construction have been pre-approved by the Council and do not require descriptions to be submitted to the Council for approval. The first instance is where there is a current code evaluation report from International Code Council Evaluation Services (ICC ES). The second is where there is a current product evaluation report or listing from a product certification agency accredited by the International Accreditation Service (IAS) that shows compliance with the applicable mandatory building codes. In these instances, the Department and the Council believe that the evaluation report or listing will provide sufficient evidence of compliance with the mandatory building codes and that no further scrutiny by the Council is needed. The rule clarifies that an industrialized house or building with an evaluation report or listing is not exempt from the requirements of Texas Occupations Code, Chapter 1202.

The Department drafted and distributed the proposed amendments to persons internal and external to the agency. The proposal was published in the *Texas Register* on February 15, 2008. The comment period closed on March 17, 2008. No public comments were received regarding the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department, and Texas Occupations Code, Chapter 1202. In particular, §1202.101(a) directs the Texas Commission of Licensing and Regulation to adopt rules as necessary to ensure compliance with the purposes of Texas Occupations Code, Chapter 1202 and provide for uniform enforcement of this chapter.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2008.

TRD-200801909
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Texas Department of Licensing and Regulation
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Proposal publication date: February 15, 2008
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) adopts an amendment to §61.1012, concerning contracts and tuition. The amendment is adopted with a non-substantive, technical change to the proposed text as published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 643). The adopted amendment modifies the existing rule to reflect changes in law made by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006.

Through 19 TAC §61.1012, adopted to be effective September 7, 2000, the commissioner exercised rulemaking authority relating to contracts for tuition outside a school district. In accordance with Texas Education Code (TEC), §25.039 and §42.106, the current rule establishes definitions, explains tuition charges for

transfer students, and describes the maximum tuition amount allowed for property value adjustment. The rule was last amended to be effective March 28, 2004, to reflect changes in statute made by HB 1619, 78th Texas Legislature, 2003. These changes modified TEC, §25.039 and §42.106, to allow a district to charge tuition at a rate higher than the rate limit established in statute, yet limited a district's tuition-related adjustments to property value to adjustments prescribed by the calculated limit.

The adopted amendment to 19 TAC §61.1012 incorporates new elements of the state funding system that were adopted in HB 1, 79th Texas Legislature, Third Called Session, 2006, and delineates the revised tuition calculation to reflect those changes. The adopted amendment permits a district to continue receiving the adjustment to property values to the extent that the district is reimbursed for its tuition costs. The adopted amendment limits the use of the adjusted property values so that a district is not reimbursed for tuition costs more than once.

The adopted amendment also removes several expired provisions and updates references to statutory citations.

A non-substantive, technical correction was made at adoption in subsection (b)(2) to lowercase the word "fund" in the phrase "interest and sinking fund." This correction is consistent with other references to the phrase in 19 TAC Chapter 61.

The TEA has determined that the adopted amendment will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began on January 25, 2008, and ended February 24, 2008. Following is a summary of public comments and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 61, School Districts, Subchapter AA, Commissioner's Rules on School Finance, §61.1012, Contracts and Tuition for Education Outside District.

Comment. Representatives of Moak, Casey & Associates and O'Hanlon, McCollom & Demerath commented that the commissioner does not have authority to adopt the proposed amendment to 19 TAC §61.1012 under the statutory authority cited in the proposal (TEC, §25.039 and §42.106, and HB 1, Section 1.22, 79th Texas Legislature, Third Called Session, 2006).

Agency Response. The agency disagrees. First, the commissioner has explicit rulemaking authority in TEC, §25.039(b), to adopt rules regarding the calculation of the tuition charge that may be used for the adjustment of property values. The existing rule includes language that describes how the maximum tuition is used to adjust property values for the purpose of reimbursing tuition paid by districts that must pay tuition. The proposed rule amendment explains how that adjusted value will be used in the calculation of state funding subsequent to the implementation of HB 1.

Second, the commissioner was also explicitly authorized to adopt rules for the implementation of HB 1, 79th Texas Legislature, Third Called Session, 2006, in TEC, §42.2516(k). The calculation of state funding, particularly the funding due under TEC, §42.302, was affected significantly by the implementation of the bill.

Third, HB 1, Section 1.22, authorized the commissioner to "treat a reference to a tax rate of $1.50 in Chapter 41 or 42, Education Code, or in *a rule implementing those chapters* (emphasis added) . . . as a different tax rate consistent with the effect of reducing school district tax rates." Thus, the commissioner is authorized to treat any reference to $1.50 in Chapters 41 or 42, or in rules that implement those chapters, as a different tax rate. Section 42.106 is one of those sections authorized for adjustment in HB 1. The statute and rule both provide that districts that pay tuition will be treated differently from districts that do not. The proposed rule amendment does not change that approach.

Finally, the authors of HB 1 have expressed their intention to the agency in a letter specifically stating that the "purpose of the adjustment was to reimburse districts for tuition reasonably required by a receiving district." Further, the letter clearly states that it was not their intention to create a situation in which a district receives state funds "far in excess of any reasonable amount of tuition paid." The letter from the authors also confirms their understanding of the agency's rulemaking authority under HB 1 to make such an adjustment.

Comment. Representatives of Moak, Casey & Associates and O'Hanlon, McCollom & Demerath commented that adopting a rule at this time to impact the 2006-2007 school year is inappropriate as that school year is completed, audits have been submitted, and the agency approved tuition agreement contracts several months ago.

Agency Response. The agency disagrees. There have not been any changes to the 2006-2007 tuition limits that were posted in the spring of 2006, before the passage of HB 1. The agency is not planning to change the tuition limits for the 2006-2007 school year, but will change the way that the property value adjustment is applied. The amendment will affect only the application of the property value adjustment, not the tuition amount that can be charged. Additionally, the 2006-2007 school year remains subject to adjustment under the "settle-up" process authorized in TEC, §42.253.

Comment. Representatives of Moak, Casey & Associates and O'Hanlon, McCollom & Demerath commented that adopting a rule at this time to impact the 2007-2008 school year is inappropriate as that school year is partially completed and contracts related to tuition agreements were executed before the amendment to the rule was proposed.

Agency Response. The agency disagrees. Due to the proposed amendment, the tuition rates for 2007-2008 were maintained at 2006-2007 levels. The tuition limits for 2007-2008 will not be changed during the school year. New limits for 2008-2009 that conform to the amendment will be published in the spring of 2008.

Comment. Concerning §61.1012(c)(1)(A) and (B), representatives of Moak, Casey & Associates and O'Hanlon, McCollom & Demerath commented that the commissioner does not have the statutory authority to elect not to apply the taxable values, as adjusted by §42.106, in calculating state aid for the purposes of Chapter 42.

Agency Response. The agency disagrees. TEC, §42.106, was written before the passage of HB 1. That section did not anticipate the current school finance structure, in which there are additional tiers of enrichment beyond the school finance system that included reimbursement for tuition paid to another district. In addition, HB 1 provided rulemaking authority with regard to the calculation of funding due under TEC, §42.302, which is intrinsically linked to §42.106.

Comment. Concerning §61.1012(c)(1)(C), representatives of Moak, Casey & Associates and O'Hanlon, McCollom &

Demerath commented that the subparagraph exceeds the authority provided to the commissioner by HB 1 to adjust tax rates in certain state aid calculations related to tax compression. The comment stated that HB 1, which specifies that the commissioner can treat a reference to a $1.50 tax rate as a different tax rate for the purpose of reducing school district tax rates to the state compression percentage rate, does not allow the commissioner to select any rate required to limit a school finance benefit to a school district.

Agency Response. The agency disagrees. The amended rule is specifically designed not to require districts to levy taxes in the enrichment tiers in order to be fully reimbursed for their tuition costs. It is not intended to limit any legitimate school finance benefit to a school district.

Comment. Representatives of Moak, Casey & Associates and O'Hanlon, McCollom & Demerath commented that allowing the commissioner to use the adjusted values in the calculation of state aid for taxes collected below the compressed rate (Tier II level 1) and the unadjusted values in the calculation of state aid for taxes collected above the compressed rate (Tier II levels 2 and 3) in the proposed rule will eliminate any impact of the value adjustments in 2007-2008 and after.

Agency Response. The agency disagrees. The amended rule will provide a mechanism that fully reimburses the sending school district for the tuition it pays to the receiving school district. The purpose is to ensure that districts are fully reimbursed for their tuition payments at the compressed tax rate level. The amendment is designed specifically so that school districts are not required to levy taxes above the compressed tax rate in order to be reimbursed for their tuition.

The amendment is adopted under the Texas Education Code, §25.039 and §42.106, which authorize the commissioner of education to by rule specify the amount of tuition to be paid under contract for education of students outside a district. House Bill 1, Section 1.22, 79th Texas Legislature, Third Called Session, 2006, authorizes the commissioner to adopt rules to implement that legislation.

The amendment implements the Texas Education Code, §25.039 and §42.106, and House Bill 1, Section 1.22, 79th Texas Legislature, Third Called Session, 2006.

§61.1012. Contracts and Tuition for Education Outside District.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Home district--District of residence of a transferring student.

(2) Receiving district--District to which a student is transferring for the purpose of obtaining an education.

(3) Tuition--Amount charged to the home district by the receiving district to educate the transfer student.

(b) Tuition charge for transfer students. For the purposes of adjusting the property value of the home district as authorized by Texas Education Code (TEC), §42.106, the amount of tuition that may be attributed to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. Tuition may be set at a rate higher than the calculated limit if both districts enter a written agreement, but the calculated tuition limit will be used in the calculation of adjusted property value for the home district. The calculation will use the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year. For purposes of this section, the number of students enrolled in a district will be appropriately adjusted to account for students ineligible for the Foundation School Program funding and those eligible for half-day attendance.

(1) Excess maintenance and operations (M&O) revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with TEC, Chapter 42, Subchapters B, C, and F, plus the state aid generated in accordance with TEC, §42.2516(b), and any reductions to state aid made in accordance with TEC, §42.2516(g) and §42.2516(h). These state aid amounts are added to M&O tax collections, and the sum is divided by enrollment to determine the amount of total state and local revenue per enrolled student. The amount of state aid gained by the addition of one transfer student is subtracted from the total amount of state and local revenue per student to determine the revenue shortfall created by the addition of one student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in TEC, Chapter 46, Subchapter A.

(A) The data for this calculation are derived from the Public Education Information Management System (PEIMS) fall data submission (budgeted M&O tax collections and student enrollment) and the Legislative Payment Estimate (LPE) data (Foundation School Program (FSP) student counts and property value).

(B) The state aid gained by the receiving district from the addition of one transfer student is computed by the commissioner of education. The calculation assumes that the transfer student participates in the special programs at the average rate of other students in the receiving district.

(2) Excess debt revenue per enrollee. A district's excess debt revenue per enrollee is defined as interest and sinking fund (I&S) taxes budgeted to be collected that surpass the taxes equalized by the IFA pursuant to TEC, Chapter 46, Subchapter A, and the Existing Debt Allotment (EDA) pursuant to TEC, Chapter 46, Subchapter B, divided by enrollment.

(A) The local share of the IFA for bonds is subtracted from debt taxes budgeted to be collected as reported through PEIMS. The local share of the EDA is subtracted from debt taxes budgeted to be collected as reported through PEIMS only if the district receives a payment for the state share of EDA.

(B) The estimate of enrollment includes transfer students.

(3) Base tuition limit. The base tuition limit per transfer student for the receiving district is a percentage of its state and local entitlement per enrollee from both tiers of the FSP. The entitlement includes the Texas Education Agency's estimate for the current year for the total of allotments in accordance with TEC, Chapter 42, Subchapters B and C, plus the state and local shares of the guaranteed yield allotment (GYA) in accordance with TEC, Subchapter F, which includes additional state aid for tax reduction in accordance with TEC, §42.2516(b).

(A) For this purpose, the GYA is calculated as the product of the guaranteed level (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally multiplied by 100 for tax effort that is described in TEC, §42.302(a-1) and (a-3), as applicable.

(B) Beginning with the 2008-2009 school year, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first

$.06 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a).

(C) For the 2006-2007 and 2007-2008 school years, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first $.04 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a). This subparagraph expires September 1, 2008.

(4) Calculated tuition limit. The calculated tuition limit is the sum of the excess M&O revenue per enrollee, the excess debt revenue per enrollee, and the base tuition limit, as calculated in subsections (b)(1), (b)(2), and (b)(3) of this section, respectively.

(5) Notification and appeal process. In the spring of each school year, the commissioner will provide each district with its calculated tuition limit and a worksheet with a description of the derivation process. A district may appeal to the commissioner if it can provide evidence that the use of projected student counts from the LPE in making the calculation is so inaccurate as to result in an inappropriately low authorized tuition charge and undue financial hardship. A district that used significant nontax sources to make any of its debt service payments during the base year for the computation may appeal to the commissioner to use projections of its tax collections for the year for which the tuition limit will apply. The commissioner's decision regarding an appeal is final.

(c) Maximum tuition amount in property value adjustment. The maximum tuition amount to be used in the adjustment to property value is limited to the amount per student computed in subsection (b)(4) of this section.

(1) The adjusted property values will be applied to the calculation of state aid as described in the following subparagraphs.

(A) Beginning with the 2008-2009 school year and subsequent school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-1)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-1)(2) and (a-1)(3).

(B) For the 2006-2007 and the 2007-2008 school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-3)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-3)(2) and (a-1)(3). This subparagraph expires September 1, 2008.

(C) The tax rate used to calculate the adjustment to property values will be adjusted to ensure that the property value adjustment provides sufficient state aid to cover the cost of the maximum tuition amount or the actual tuition amount, whichever is lesser.

(2) The adjustment to property values of the home district may not result in an increase of revenue to the home school district that exceeds 10% of the total tuition paid to the receiving district to educate the transfer student(s).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801924

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 4, 2008
Proposal publication date: January 25, 2008
For further information, please call: (512) 475-1497

SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

The Texas Education Agency (TEA) adopts the repeal of and new §61.1014, concerning school finance. The repeal and new section are adopted without changes to the proposal as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1051) and will not be republished. The repealed section addressed the determination of Foundation School Program (FSP) gains for additional state aid for school employee benefits. The adopted repeal and new rule clarify and expand the description given in rule of the methods the TEA uses to determine, for each school district and open-enrollment charter school, eligibility to receive additional state aid to pay contributions under a group health insurance plan.

Through 19 TAC §61.1014, adopted to be effective December 2, 2001, the commissioner exercised rulemaking authority relating to determination of FSP gains. These funds are to be used by eligible school districts and open-enrollment charter schools that participate in a group health insurance plan. The adopted actions repeal the provisions in 19 TAC §61.1014, Determination of Foundation School Program Gains, from rule and specify the determination methods in new 19 TAC §61.1014, Additional State Aid for School Employee Benefits.

The repealed 19 TAC §61.1014, Determination of Foundation School Program Gains, described the methods the TEA used to determine, for each school district and open-enrollment charter school, the amount of gain from modifications to the school finance formulas enacted by the 77th Texas Legislature, 2001. The repealed rule also stated the times at which TEA made preliminary and final determinations of gains.

Adopted new 19 TAC §61.1014, Additional State Aid for School Employee Benefits, clarifies and expands the description of the methods the TEA uses to determine the FSP gains, as well as explicitly states the formula elements. The adopted new rule also continues to set forth that the commissioner will provide reports that illustrate the computation of estimates and make preliminary and final determinations of gains.

The TEA has determined that the adopted repeal and new section will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began February 8, 2008, and ended March 9, 2008. No public comments were received.

19 TAC §61.1014

The repeal is adopted under Texas Education Code, §42.2514, which authorizes the commissioner of education to adopt rules to implement additional state aid for school employee benefits; and Texas Education Code, §42.260, which authorizes the commissioner to adopt rules to implement use of certain funds due to

the increase made by House Bill 3343, 77th Texas Legislature, Regular Session, 2001.

The repeal implements Texas Education Code, §42.2514 and §42.260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801926
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 4, 2008
Proposal publication date: February 8, 2008
For further information, please call: (512) 475-1497

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19 TAC §61.1014

The new section is adopted under Texas Education Code, §42.2514, which authorizes the commissioner of education to adopt rules to implement additional state aid for school employee benefits; and Texas Education Code, §42.260, which authorizes the commissioner to adopt rules to implement use of certain funds due to the increase made by House Bill 3343, 77th Texas Legislature, Regular Session, 2001.

The new section implements Texas Education Code, §42.2514 and §42.260.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 4, 2008
Proposal publication date: February 8, 2008
For further information, please call: (512) 475-1497

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SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1032

The Texas Education Agency (TEA) adopts an amendment to §61.1032, concerning school facilities. The amendment is adopted without changes to the proposed text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1053) and will not be republished. The section addresses provisions relating to the instructional facilities allotment (IFA). The adopted amendment modifies the calculation of a district's wealth per student for districts affected by a defense base realignment, based on changes to statutory language, in accordance with Senate Bill (SB) 962, 80th Texas Legislature, 2007. The adopted amendment also incorporates other updates and revisions for the IFA program, such as the addition of new definitions, establishment of procedures and time limits for reporting changes, and explanations of present value savings calculations and the effects of refinancing.

Through 19 TAC §61.1032, adopted to be effective October 13, 1997, the commissioner exercised rulemaking authority relating to assistance with payment of instructional facility debt. The current provisions include procedural and other requirements that districts applying for and receiving assistance must follow, debt eligibility requirements, limitations on assistance, a description of the data sources used in making assistance determinations, and procedures for payment of assistance.

SB 962, 80th Texas Legislature, 2007, amended the Texas Education Code (TEC), §46.006, to reduce a district's wealth per student if the district must construct, acquire, or renovate instructional facilities as a result of a military base realignment. In accordance with this change, the adopted amendment to 19 TAC §61.1032 adds new language in subsection (m)(2)(D) to modify the calculation of wealth per student for districts that meet the stipulations set forth in amended TEC, §46.006.

The adopted amendment to 19 TAC §61.1032 also incorporates the following updates and revisions.

Subsection (a) is revised to modify the definition of debt service in paragraph (4) and to add new paragraph (6) to define the term "interest rate management agreement."

Subsection (b) is revised to clarify that a separate application must be completed for each debt issue or lease-purchase agreement proposed for funding.

Subsection (d) is revised to clarify debt eligibility requirements, including the addition of new language in paragraphs (6) and (7) and new paragraph (8). Paragraph (6) addresses refinancing bonded debt. Paragraph (7) specifies reporting requirements that a district must follow when it makes a change to any IFA-supported bonds or IFA-supported lease-purchase agreement. New paragraph (8) establishes a state aid penalty for failure to disclose such a change and explains how IFA eligibility is regained after it has been lost as a result of failing to report a change.

Subsection (d) also is revised to add new paragraph (9) to address refunding bonds. New paragraph (9)(C) defines present-value savings and requires a district's financial advisor to certify present-value savings. New paragraph (9)(D) explains that a conversion of the period, mode, or index used to determine the interest rate for eligible debt will not be considered a refunding of the debt. New paragraphs (9)(E) and (9)(F) explain how the refinancing of debt multiple times may affect its eligibility for IFA aid and cause it to be considered for conversion to Existing Debt Allotment eligibility.

Subsequent paragraphs in subsection (d) are renumbered and updated accordingly. Changes in the renumbered paragraphs include revisions in new paragraph (10)(B) to remove from IFA eligibility any debt service associated with a lease-purchase agreement that has been refinanced for a term of fewer than eight years. Also, new paragraph (13) addresses debt entered into through an interest rate management agreement.

Subsection (f) is revised to address potential increased IFA support.

Subsection (g) is revised to clarify how a change in debt service requirements may affect the allotment awarded.

Subsection (h) is revised by modifying paragraph (6) and adding new paragraph (7). The modification to paragraph (6) requires

that adjustments to state assistance for any reason be requested within a three-year time limit. New paragraph (7) requires that a district submit an up-to-date debt service schedule after any financing activity in order for bond issues and lease-purchase agreements and their related debt service payments to remain eligible to receive IFA state assistance.

Subsection (i) is revised to establish a method for allocation of debt service between eligible and ineligible categories.

Subsection (j) is revised by modifying paragraph (1) and adding new paragraph (6). The modification to paragraph (1) explains that requests for payments and/or adjustments submitted to TEA after December 15 will be processed with the payments due for the following fiscal year. New paragraph (6) requires that adjustments to state assistance for any reason be requested within a three-year time limit.

Subsections (k), (l), and (p) are revised to incorporate technical edits.

Subsection (s) is revised to clarify supplemental filings for fixed-rate bonds.

Subsection (t) is revised to require that a district notify the commissioner of IFA-related financing activities by submitting an amended application packet. New paragraph (2) defines the materials that make up a complete amended application packet.

The TEA has determined that the adopted amendment will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began February 8, 2008, and ended March 9, 2008. No public comments were received.

The amendment is adopted under the Texas Education Code, §46.002, which authorizes the commissioner of education to adopt rules for the administration of Texas Education Code, Chapter 46, Assistance with Instructional Facilities and Payment of Existing Debt, Subchapter A, Instructional Facilities Allotment.

The amendment implements the Texas Education Code, §46.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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Proposal publication date: February 8, 2008
For further information, please call: (512) 475-1497

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19 TAC §61.1035

The Texas Education Agency (TEA) adopts an amendment to §61.1035, concerning school facilities. The amendment is adopted without changes to the proposed text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1060) and will not be republished. The section addresses provisions relating to the Existing Debt Allotment (EDA). The adopted amendment modifies eligibility for the EDA based on changes to statutory language, in accordance with Senate Bill (SB) 962, 80th Texas Legislature, 2007, and House Bill (HB) 1922, 80th Texas Legislature, 2007. The adopted amendment also incorporates other revisions to the EDA program, such as requiring the reporting of bond issues and related debt service payments and the disclosing of transactions that affect EDA eligible bonds, explaining the effect of interest rate management agreements, establishing requirements for refinanced bonds, and modifying the time limit for amending data used for calculations.

Through 19 TAC §61.1035, adopted to be effective December 12, 1999, the commissioner exercised rulemaking authority relating to assistance with payment of existing debt. The current provisions include the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt.

HB 1922, 80th Texas Legislature, 2007, amended the Texas Education Code (TEC), §46.033 and §46.034, relating to assistance with payment of existing debt, by updating the reference to eligibility date of bonds from 2004-2005 to 2006-2007. SB 962, 80th Texas Legislature, 2007, amended TEC, §46.034, to restrict certain limitations on assistance if a district is affected by a military base realignment. The adopted amendment to 19 TAC §61.1035 includes revisions that incorporate these statutory changes as well as other updates and revisions, as follows.

Subsection (a) is revised in paragraph (1) to specify that payment on bonds must have been made on or before August 31, 2007, to meet eligibility criteria. Paragraph (1) is also revised to add language requiring that final official statements or bond orders be reported to the state information depository in order for bond issues and their related debt service payments to be eligible to receive EDA state assistance. Technical corrections to terms are also made in subsection (a).

Subsection (b) is revised by adding new paragraphs (3) - (5). New paragraph (3) requires a district to disclose any changes in the financing of EDA-supported debt. New paragraph (4) establishes a state aid penalty for failure to disclose such changes and explains how EDA eligibility is regained after it has been lost as a result of failing to report changes. New paragraph (5) requires a district to disclose interest rate management agreement transactions and their associated credit risk ratings in the final official statement related to the bond transaction. It also establishes a state aid penalty for failure to disclose the interest rate management agreement. Additional technical corrections to terms and numbering are also made in subsection (b).

Subsection (c) is revised to modify the calculation of the existing debt tax rate for a district affected by a military base realignment.

Subsection (d) is revised by adding new paragraph (2) to explain that requests for payments or adjustments that are submitted to TEA after December 15 will be processed with the payments due for the following fiscal year. The subsequent paragraphs are renumbered accordingly. Renumbered paragraph (3)(B) changes the date by which districts must remit amounts they were overpaid to be no later than 30 days after the date they were notified of the overpayment. Renumbered paragraph (3)(C) requires that adjustments to state assistance for any reason be requested within a three-year time limit.

Subsection (f) is revised by modifying paragraph (1) to clarify the definition of refinanced debt. New paragraph (2) is added to describe penalties for failure to report required information on refinancings. Subsequent paragraphs are renumbered accordingly.

New subsection (g) is added to require that a district notify the commissioner of EDA-related financing activities by submitting an EDA correction form packet. New subsection (g) also defines the materials that make up a complete EDA correction form packet.

The TEA has determined that the adopted amendment will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began February 8, 2008, and ended March 9, 2008. No public comments were received.

The amendment is adopted under the Texas Education Code, §46.031, which authorizes the commissioner of education to adopt rules for the administration of Texas Education Code, Chapter 46, Assistance with Instructional Facilities and Payment of Existing Debt, Subchapter B, Assistance with Payment of Existing Debt; and Texas Education Code, §46.061, which authorizes the commissioner to by rule provide for the payment of state assistance under Texas Education Code, Chapter 46, to refinance school district debt.

The amendment implements the Texas Education Code, §46.031 and §46.061.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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Proposal publication date: February 8, 2008
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH SUBCHAPTER D. STATE EMPLOYEE HEALTH FITNESS AND EDUCATION PROGRAMS

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §1.61 and §1.62, and new §1.61, concerning the Worksite Wellness Advisory Board (board) without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8655) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The "State Employees Health Fitness and Education Act of 1983" (Government Code, Chapter 664) allowed state agencies to encourage employee fitness. Before implementing such a program, the agency was required to develop a plan that was approved by the department. The 80th Legislature, 2007, amended this Act to further encourage employee fitness by providing for a statewide wellness coordinator and board, but repealing the requirement that the department approve individual agency plans.

The repeals comply with House Bill (HB) 1297 (Chapter 665) from the 80th Legislative Session, which amended Government Code, by repealing §664.006, Plans. The new rule complies with the Legislation which added Government Code, §664.052, Rules, requiring the Executive Commissioner of the Health and Human Services Commission to adopt rules to administer Subchapter B. State Employee Wellness Program, outlining the composition of the newly created board, purpose and tasks, and meeting requirements, and Government Code, §2110.005, which requires rules on Advisory Committees which serve state agencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 1.61 and 1.62 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, §1.61 and §1.62 are repealed and a new §1.61 is adopted.

SECTION-BY-SECTION SUMMARY

Government Code, §664.006, required state agencies to submit plans to conduct health fitness programs for their employees has been repealed, thereby requiring the repeal of §1.61 and §1.62, which prescribes what items must be covered in the development of a health fitness plan.

New §1.61 contains the requirements of the new Government Code, §664.052, outlining the composition of the board, its duties, and meeting requirements.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

25 TAC §1.61, §1.62

STATUTORY AUTHORITY

The repeals that support administration of Government Code, Chapter 664, State Employees Health Fitness and Education Act are authorized by House Bill 1297 (Chapter 665), 80th Legislative Session, Section 4, which amends Government Code, Chapter 664; Section 6, which repeals Government Code, §664.006; Government Code, §2110.005, which requires

rules on advisory committees which serve state agencies; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801948
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 4, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 458-7111 x6972

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25 TAC §1.61

STATUTORY AUTHORITY

The new rule that supports administration of Government Code, Chapter 664, State Employees Health Fitness and Education Act is authorized by House Bill 1297 (Chapter 665), 80th Legislative Session, Section 4, which amends Government Code, Chapter 664; Section 6, which repeals Government Code, §664.006; Government Code, §2110.005, which requires rules on advisory committees which serve state agencies; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200801947
Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: November 30, 2007
For further information, please call: (512) 458-7111 x6972

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CHAPTER 289. RADIATION CONTROL

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §289.228, concerning radiation safety requirements for analytical and other industrial radiation machines; an amendment to §289.251, concerning exemptions, general licenses; and general license acknowledgements; an amendment to §289.252, concerning licensing of radioactive material; and an amendment to §289.258, concerning licensing and radiation safety requirements for irradiators. The amendment to §289.252 is adopted with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9232). The amendments to §§289.228, 289.251, and 289.258 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendment of §289.228 adds a list of industrial radiation machines to specify the industrial radiation machines that are applicable to this section. The revision adds exemptions for uses of minimal threat radiation machines, uses of certified and certifiable cabinet x-ray systems, and uses of portable/handheld fluorescence x-ray (open beam) devices. In addition, equipment requirements are added for certified and certifiable cabinet x-ray systems and package x-ray systems and personnel requirements are added to address instructions for bomb detection radiation machines.

The amendment of §289.251 provides corrections and clarifications, revisions due to legislation that removed the need for administrative review of licenses every two years, and additions regarding exportation and annual inventories that are items of compatibility with the United States Nuclear Regulatory Commission (NRC). As an agreement state with the NRC, Texas must adopt them.

The amendment of §289.252 is necessary to revise the license review and expiration requirements in response to legislation, to increase the amount and methods of calculating the need for decommissioning plans and financial assurance for certain licensees, this is an item of compatibility with the NRC, and to add increased control requirements that are required by the NRC and must be adopted by Texas as an agreement state.

The amendment of §289.258 provides corrections and clarifications as well as additional information on personnel monitoring required by the NRC and must be adopted by Texas as an agreement state.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 289.228, 289.251, 289.252, and 289.258 have been reviewed and the department has determined that the reasons for adopting these sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

Section 289.228 changes the title of the section to read "Radiation Safety Requirements for Industrial Radiation Machines," instead of "Radiation Safety Requirements for Analytical and Other Industrial Radiation Machines" for clarification of the radiation machines that this section addresses. The words "analytical and other" are deleted from the first sentence in §289.228(a) to be consistent with the change in the title to this section, and a list of industrial radiation machines is added to specify the industrial radiation machines that are applicable to this section. The definitions of "Analytical radiation machines" and "Other industrial radiation machines" are deleted from §289.228(c) because these terms were not definitions but instead specified lists of these types of radiation machines that are addressed in §289.228(a). A definition of "Minimal threat radiation machines" is added to

§289.228(c) to clarify that these radiation machines are applicable to this section and examples of minimal threat radiation machines are added to this definition to specify the minimal threat radiation machines that are applicable to this section. Subsequent definitions are renumbered as a result of the addition and deletion of definitions.

New §289.228(d) is added to address exemptions for uses of minimal threat radiation machines, uses of certified and certifiable cabinet x-ray systems, and uses of portable/handheld fluorescence x-ray (open beam) devices as the current section does not include exemptions. Subsequent subsections are relettered as a result of the addition of the new subsection.

In addition, relettered §289.228(e) adds equipment requirements for certified and certifiable cabinet x-ray systems and package x-ray systems because the current section does not specify requirements for these x-ray systems. Concerning relettered §289.228(h)(1), current subparagraph (D) is deleted as the department has determined that instructions in and demonstration of competence in symptoms of an acute localized exposure are not applicable. Section 289.228(h) also adds two new paragraphs to provide instructions for bomb detection radiation machines and record and documentation requirements.

The revisions to §289.251 are necessary to correct references, and these changes are made in §289.251(e)(1)(A), (e)(2)(A), (e)(2)(D), (e)(2)(E), (e)(3)(A)(i)(VIII), and (f)(4)(J).

The word "interest" is removed from §289.251(f)(2)(D) for clarity. An incorrect numerical reference is corrected in §289.251(f)(4)(H)(iv)(VII). Information is added to clarify the information to be included in the report referenced in this subclause, and a subclause reference is added for clarity in §289.251(f)(4)(H)(iv)(IX).

An addition is made relating to the exportation of certain devices containing radioactive material. This addition begins in §289.251(f)(4)(H)(iv)(X) and continues in §289.251(f)(4)(H)(iv)(XVI). New references to this information are added in §289.251(f)(4)(H)(iv)(IX) and §289.251(g)(1)(C). The word "or export" is added to §289.251(f)(4)(H)(iv)(X). Section 289.251(f)(4)(H)(iv)(XVIII) adds new requirements for responding to agency requests. These changes are necessary for compatibility with the NRC.

Section 289.251(f)(4)(H)(iv)(XVII) is added to require general licensees to follow reporting requirements in §289.202 for theft or lose, but exempts them from other subparts of §289.202.

Section 289.251(f)(4)(J) clarifies that manufacturer instructions for test performance must be maintained.

Section 289.251(g)(3) is added to address compatibility issues with the NRC regarding reporting requirements for information requested of general licensees by the Agency.

Changes in §289.251(j) and §289.251(k) are made to address legislation that removed the need for administrative reviews and changed expiration requirements.

References are changed to properly refer to the appropriate section or subsection of §289.252. These changes are included in §289.252(d)(6), (u)(4), (gg)(1)(A), (gg)(6)(B), (hh)(1), and (hh)(2).

Changes in §289.252(f)(3)(L) are made to clarify the terms of the required inventory of radioactive material.

Section 289.252(o) is changed to correct the references to subsections of §289.256 concerning medical and veterinary uses of radioactive material.

Section 289.252(r)(3)(A) is changed to make the requirement compatible with the specific requirement in §289.256 concerning medical and veterinary use of radioactive material.

Section 289.252(x)(4) is changed to add notification requirements from the licensee or certain changes to their licensed activities.

Sections 289.252(y) and (z) are changed to address the need to remove the requirement for administrative reviews made necessary by recent legislation.

Section 289.252(gg) is changed to address financial assurance criteria and to increase required amounts necessary to assure that decommissioning of licensees sites is properly funded.

Section 289.252(ii) is added to provide the increased control requirements required by the NRC.

Section 289.252(jj)(9) is added to provide detailed appendices for the implementation of the increased control requirements in §289.252(ii).

In §289.258(q)(5) and (dd)(1), the word "under" is replaced by the words "in accordance with" for clarity.

Section 289.258(u) is changed to address NRC requirements regarding the use of an accredited National Voluntary Laboratory Accreditation Program (NVLAP) processor for processing personnel dosimeters.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was Radiation Technology, Inc. The commenter was not against the rules in their entirety; however, the commenter suggested a recommendation for change as discussed in the summary of comments.

Comment: Concerning §289.252(f), a commenter noted that the new requirement for the performance of a "physical" inventory would require that sources be removed from storage. This removal would increase employee dose as well as potentially increasing public dose at the fence line of facilities. For licensees possessing multiple sources these doses could increase greatly.

Response: The proposed rule does not require that sources necessarily be removed from their shielded containers to perform the physical inventory. The as low as reasonably achievable (ALARA) concept may still be achieved through other measures, i.e. use of a survey instrument to determine presence of a source of radiation, use of remote handling devices, etc. The need for security of radioactive sources has increased since the events of September 11, 2001. The department has determined that it is imperative to have an accurate accounting of radioactive sources and that a physical inventory is the best means of achieving that accountability. No change was made as a result of the comment.

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following minor changes that correct rule reference citations in §289.252(o), and a scientific notation in §289.252(gg)(3)(A).

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER E. REGISTRATION REGULATIONS

25 TAC §289.228

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801911
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 1, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §§289.251, 289.252, 289.258

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

§289.252. Licensing of Radioactive Material.

(a) Purpose. The intent of this section is as follows.

(1) This section provides for the specific licensing of radioactive material.

(2) Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized by the following:

(A) a specific license issued in accordance with this section and/or any of the following sections:

(i) §289.254 of this title (relating to Licensing of Radioactive Waste Processing and Storage Facilities);

(ii) §289.255 of this title (relating to Radiation Safety, Requirements and Licensing and Registration Procedures for Industrial Radiography);

(iii) §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material);

(iv) §289.258 of this title (relating to Licensing and Radiation Safety Requirements for Irradiators);

(v) §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM));

(vi) §289.260 of this title (relating to Licensing of Uranium Recovery and Byproduct Material Disposal Facilities); or

(B) a general license or general license acknowledgment issued in accordance with §289.251 of this title (relating to Exemptions, General Licenses, and General License Acknowledgements).

(3) A person who receives, possesses, uses, transfers, owns, or acquires radioactive materials prior to receiving a license is subject to the requirements of this chapter.

(b) Scope. In addition to the requirements of this section, the following additional requirements are applicable.

(1) All licensees, unless otherwise specified, are subject to the requirements in the following sections:

(A) §289.201 of this title (relating to General Provisions for Radioactive Material);

(B) §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Material);

(C) §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections);

(D) §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services);

(E) §289.205 of this title (relating to Hearing and Enforcement Procedures); and

(F) §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(2) Licensees engaged in well logging service operations and tracer studies are subject to the requirements of §289.253 of this title (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(3) Licensees engaged in radioactive waste processing and/or storage are subject to the requirements of §289.254 of this title.

(4) Licensees engaged in industrial radiographic operations are subject to the requirements of §289.255 of this title.

(5) Licensees using radioactive material for medical or veterinary use are subject to the requirements of §289.256 of this title.

(6) Licensees using sealed sources in irradiators are subject to the requirements of §289.258 of this title.

(7) Licensees possessing or using naturally occurring radioactive material are subject to the requirements of §289.259 of this title.

(8) Licensees engaged in uranium recovery and byproduct material disposal are subject to the requirements of §289.260 of this title.

(c) Types of licenses. Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in §289.251 and §289.259 of this title are effective without the filing of applications with the agency or the issuance of licensing documents to the particular persons, although the filing of an application for acknowledgement with the agency may be required for a particular general license. The general licensee is subject to any other applicable portions of this chapter and any limitations of the general license.

(2) Specific licenses require the submission of an application to the agency and the issuance of a licensing document by the agency. The licensee is subject to all applicable portions of this chapter as well as any limitations specified in the licensing document.

(d) Filing application for specific licenses. The agency may, at any time after the filing of the original application, require further statements in order to enable the agency to determine whether the application should be denied or the license should be issued.

(1) Applications for specific licenses shall be filed in a manner prescribed by the agency.

(2) Each application shall be signed by the chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(3) An application for a license may include a request for a license authorizing one or more activities. The agency may require the issuance of separate specific licenses for those activities.

(4) Each application for a specific license, other than a license exempted from §289.204 of this title, shall be accompanied by the fee prescribed in §289.204 of this title.

(5) Each application shall be accompanied by a completed BRC Form 252-1 (Business Information Form).

(6) Each applicant shall demonstrate to the agency that the applicant is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license. Each licensee shall demonstrate to the agency that it remains financially qualified to conduct the licensed activity before a license is renewed. Methods for demonstrating financial qualifications are specified in subsection (jj)(8) of this section. The requirement for demonstration of financial qualification is separate from the requirement specified in subsection (gg) of this section for certain applicants or licensees to provide financial assurance.

(7) If facility drawings submitted in conjunction with the application for a license are prepared by a professional engineer or engineering firm, those drawings shall be final and shall be signed, sealed and dated in accordance with the requirements of the Texas Board of Professional Engineers, 22 Texas Administrative Code, Chapter 131.

(8) Applications for licenses shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the license or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the license. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapter 2001.

(9) Notwithstanding the provisions of §289.204(d)(1) of this title, reimbursement of application fees may be granted in the following manner.

(A) In the event the application is not processed in the time periods as stated in paragraph (8) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with Title 1, Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

(10) Applications for licenses may be denied for the following reasons:

(A) any material false statement in the application or any statement of fact required under provisions of the Texas Radiation Control Act (Act);

(B) conditions revealed by the application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an application; or

(C) failure to clearly demonstrate how the requirements in this chapter have been addressed.

(e) General requirements for the issuance of specific licenses. A license application will be approved if the agency determines that:

(1) the applicant and all personnel who will be handling the radioactive material are qualified by reason of training and experience to use the material in question for the purpose requested in accordance with this chapter in such a manner as to minimize danger to occupational and public health and safety and the environment;

(2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to occupational and public health and safety and the environment;

(3) the issuance of the license will not be inimical to the health and safety of the public;

(4) the applicant satisfies any applicable special requirement in this section and other sections as specified in subsection (a)(2)(A) of this section;

(5) the radiation safety information submitted for requested sealed source(s) or device(s) containing radioactive material is in accordance with subsection (v) of this section;

(6) qualifications of the designated radiation safety officer (RSO) as specified in subsection (f) of this section are adequate for the purpose requested in the application;

(7) the applicant submits an adequate operating, safety, and emergency procedures manual;

(8) the applicant's permanent facility is located in Texas (if the applicant's permanent facility is not located in Texas, reciprocal recognition shall be sought as required by subsection (ee) of this section); and

(9) the owner of the property is aware that radioactive material is stored on the property, if the proposed storage facility is not owned by the applicant. The applicant shall provide a written statement from the owner, or from the owner's agent, indicating such. This paragraph does not apply to property owned or held by a government entity or to property on which radioactive material is used under an authorization for temporary job site use.

(10) there is no reason to deny the license as specified in subsection (d)(10) or (x)(7) of this section.

(f) Radiation safety officer.

(1) An RSO shall be designated for every license issued by the agency. A single individual may be designated as RSO for more than one license if authorized by the agency.

(2) The RSO's documented qualifications shall include as a minimum:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements specified in this chapter for the activities for which the license application is submitted; and

(C) training and experience necessary to supervise the radiation safety aspects of the licensed activity.

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) to establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(B) to oversee and approve all phases of the training program for operations and/or personnel so that appropriate and effective radiation protection practices are taught;

(C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) to ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §289.203 of this title;

(E) to investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(F) to investigate and cause a report to be submitted to the agency for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(G) to have a thorough knowledge of management policies and administrative procedures of the licensee;

(H) to assume control and have the authority to institute corrective actions, including shutdown of operations when necessary in emergency situations or unsafe conditions;

(I) to ensure that records are maintained as required by this chapter;

(J) to ensure the proper storing, labeling, transport, use and disposal of sources of radiation, storage, and/or transport containers;

(K) to ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(L) to perform a physical inventory of the radioactive sealed sources authorized for use on the license every six months and make and maintain records of the inventory of the radioactive sealed sources authorized for use on the license every six months, to include, but not be limited to the following:

(i) isotope(s);

(ii) quantity(ies);

(iii) activity(ies);

(iv) date inventory is performed;

(v) location;

(vi) unique identifying number or serial number; and

(vii) signature of person performing the inventory.

(M) to ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(N) to serve as the primary contact with the agency.

(4) Requirements for RSOs for specific licenses for broad scope authorization for research and development. In addition to the requirements in paragraphs (1) and (3) of this subsection, the RSO's qualifications for specific licenses for broad scope authorization for research and development shall include evidence of the following:

(A) a bachelor's degree in health physics, radiological health, physical science or a biological science with a physical science minor and four years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(B) a master's degree in health physics or radiological health and three years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed;

(C) two years of applied health physics experience in a program with radiation safety issues similar to those in the program to be managed and one of the following:

(i) doctorate degree in health physics or radiological health;

(ii) comprehensive certification by the American Board of Health Physics;

(iii) certification by the American Board of Radiology in Medical Nuclear Physics;

(iv) certification by the American Board of Science in Nuclear Medicine in Radiation Protection;

(v) certification by the American Board of Medical Physics in Medical Health Physics; or

(D) equivalent qualifications as approved by the agency.

(5) The qualifications in paragraph (4)(A) - (D) do not apply to individuals who have been adequately trained and designated as RSOs on licenses issued prior to October 1, 2000.

(g) The duties and responsibilities of the Radiation Safety Committee (RSC) include but are not limited to the following:

(1) meeting as often as necessary to conduct business but no less than three times a year;

(2) reviewing summaries of the following information presented by the RSO:

(A) over-exposures;

(B) significant incidents, including spills, contamination, or medical events; and

(C) items of non-compliance following an inspection;

(3) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA;

(4) reviewing the overall compliance status for authorized users;

(5) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(6) reviewing the audit of the radiation safety program and acting upon the findings;

(7) developing criteria to evaluate training and experience of new authorized user applicants;

(8) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility;

(9) evaluating new uses of radioactive material; and

(10) reviewing and approving permitted program and procedural changes prior to implementation.

(h) Specific licenses for broad scope authorization for multiple quantities or types of radioactive material for use in research and development.

(1) In addition to the requirements in subsection (e) of this section, a specific license for multiple quantities or types of radioactive material for use in research and development, not to include the internal or external administration of radiation or radioactive material to humans, will be issued if the agency approves the following documentation submitted by the applicant:

(A) that staff has substantial experience in the use of a variety of radioisotopes for a variety of research and development uses;

(B) of a full-time RSO meeting the requirements of subsection (f)(4) of this section;

(C) establishment of an RSC, including names and qualifications, with duties and responsibilities in accordance with subsection (g) of this section. The RSC shall be composed of an RSO, a representative of executive management, and one or more persons trained or experienced in the safe use of radioactive materials.

(2) Unless specifically authorized, persons licensed according to paragraph (1) of this subsection shall not conduct tracer studies involving direct release of radioactive material to the environment.

(3) Unless specifically authorized, in accordance with a separate license, persons licensed according to paragraph (1) of this subsection shall not:

(A) receive, acquire, own, possess, use, or transfer devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of materials;

(B) conduct activities for which a specific license issued by the agency in accordance with subsections (i) - (u) of this section and §§289.254, 289.255, 289.256, and §289.259 of this title is required;

(C) add or cause the addition of radioactive material to any food, beverage, cosmetic, drug, or other product designed for ingestion or inhalation by, or application to, a human being; or

(D) commercially distribute radioactive material.

(i) Specific licenses for introduction of radioactive material into products in exempt concentrations.

(1) In addition to the requirements in subsection (e) of this section, a specific license authorizing the introduction of radioactive material into a product or material in the possession of the licensee or another to be transferred to persons exempt from this chapter in accordance with §289.251(e)(1)(A) of this title will be issued if the agency approves the following information submitted by the applicant:

(A) a description of the product or material into which the radioactive material will be introduced;

(B) intended use of the radioactive material and the product or material into which it is introduced;

(C) method of introduction;

(D) initial concentration of the radioactive material in the product or material;

(E) control methods to assure that no more than the specified concentration is introduced into the product or material;

(F) estimated time interval between introduction and transfer of the product or material;

(G) estimated concentration of the radioactive material in the product or material at the time of transfer; and

(H) procedures for disposition of unwanted or unused radioactive material; and

(2) the applicant provides reasonable assurance that:

(A) the concentrations of radioactive material at the time of transfer will not exceed the concentrations in §289.251(m)(1) of this title;

(B) reconcentration of the radioactive material in concentrations exceeding those in §289.251(m)(1) of this title will not occur;

(C) the use of lower concentrations is not feasible; and

(D) the product or material is not to be incorporated in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human.

(3) Each person licensed in accordance with this subsection shall file an annual report with the agency and shall identify the type and quantity of each product or material into which radioactive material has been introduced during the reporting period. The report shall cover the year ending June 30, shall be filed within 30 days thereafter, and shall include the following:

(A) name and address of the person who owned or possessed the product or material when the radioactive material was introduced;

(B) the type and quantity of radionuclide introduced into each such product or material; and

(C) the initial concentrations of the radionuclide in the product or material at time of transfer of the radioactive material by the licensee.

(4) If no transfers of radioactive material have been made in accordance with this subsection during the reporting period, the report shall so indicate.

(j) Specific licenses for commercial distribution of radioactive material in exempt quantities.

(1) Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source material or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the United States Nuclear Regulatory Commission, Washington, DC 20555.

(2) In addition to the requirements in subsection (e) of this section, a specific license to distribute naturally occurring or accelerator-produced radioactive material (NARM) to persons exempt from this chapter in accordance with §289.251(e)(2) of this title will be issued if the agency approves the following information submitted by the applicant:

(A) that the radioactive material is not contained in any food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human;

(B) that the radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution;

(C) copies of prototype labels and brochures; and

(D) procedures for disposition of unwanted or unused radioactive material.

(3) The license issued in accordance with paragraph (2) of this subsection is subject to the following conditions.

(A) No more than 10 exempt quantities shall be sold or commercially distributed in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantities provided the sum of the fractions shall not exceed unity.

(B) Each exempt quantity shall be separately and individually packaged. No more than 10 such packaged exempt quantities shall be contained in any other package for commercial distribution to persons exempt from this chapter in accordance with §289.251(e)(2) of this title. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour (mrem/hr).

(C) The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label that:

(i) identifies the radionuclide and the quantity of radioactivity; and

(ii) bears the words "Radioactive Material."

(D) In addition to the labeling information required by subparagraph (C) of this paragraph, the label affixed to the immediate container, or an accompanying brochure, shall:

(i) state that the contents are exempt from the United States Nuclear Regulatory Commission (NRC), agreement state, or licensing state requirements;

(ii) bear the words "Radioactive Material--Not for Human Use--Introduction into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited--Exempt Quantities Should Not Be Combined"; and

(iii) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage, and disposal of the radioactive material.

(4) Each person licensed in accordance with this subsection shall maintain records identifying, by name and address, each person to whom radioactive material is commercially distributed for use in accordance with §289.251(e)(2) of this title or the equivalent regulations of an agreement state or a licensing state, and stating the kinds and quantities of radioactive material commercially distributed. An annual summary report stating the total quantity of each radionuclide commercially distributed in accordance with the specific license shall be filed with the agency. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no commercial distributions of radioactive material have been made in accordance with this subsection during the reporting period, the report shall so indicate.

(5) Licenses issued in accordance with this subsection do not authorize the following:

(A) combining of exempt quantities of radioactive material in a single device;

(B) any program advising persons to combine exempt quantity sources and providing devices for them to do so; and

(C) the possession and use of combined exempt sources, in a single unregistered device, by persons exempt from licensing in accordance with §289.251(e)(2) of this title.

(k) Specific licenses for incorporation of NARM into gas and aerosol detectors. In addition to the requirements in subsection (e) of this section, a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt from this chapter in accordance with §289.251(e)(3)(C) of this title will be issued if the agency approves the information submitted by the applicant. This information shall satisfy the requirements equivalent to those contained in Title 10, Code of Federal Regulations (CFR), §32.26. The maximum quantity of radium-226 in each device shall not exceed 0.1 μCi.

(l) Specific licenses for the manufacture and commercial distribution of devices to persons generally licensed in accordance with §289.251(f)(4)(H) of this title.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute devices containing radioactive material to persons generally licensed in accordance with §289.251(f)(4)(H) of this title or equivalent requirements of the NRC, an agreement state, or a licensing state will be issued if the agency approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) the device can be safely operated by persons not having training in radiological protection;

(ii) under ordinary conditions of handling, storage, and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one year a dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(iii) under accident conditions (such as fire and explosion) associated with handling, storage, and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

(I) 15 rems to the whole body; head and trunk; active blood-forming organs; gonads; or lens of eye;

(II) 200 rems to the hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter (cm^2); or

(III) 50 rems to other organs;

(B) procedures for disposition of unused or unwanted radioactive material;

(C) each device bears a durable, legible, clearly visible label or labels approved by the agency that contain the following in a clearly identified and separate statement:

(i) instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) the requirement, or lack of requirement, for leak testing, or for testing any "on-off" mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity, and date of determination of the quantity; and

(iii) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) For radioactive materials other than NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(I) (No change.)

(II) NARM, the following statement is appropriate:
Figure: 25 TAC §289.252(l)(1)(C)(iii)(II) (No change.)

(III) The model and serial number and name of manufacturer or distributor may be omitted from this label provided they are elsewhere stated in labeling affixed to the device.

(D) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial numbers, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in §289.202(z) of this title, and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of §289.251(g)(1) of this title, bears a permanent (for example, embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in §289.202(z) of this title.

(2) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material, or for both, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the device or similar devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for radioactive material leakage, the agency will consider information that includes, but is not limited to the following:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical devices or similarly designed and constructed devices.

(3) In the event the applicant desires that the general licensee in accordance with §289.251(f)(4)(H) of this title or in accordance with equivalent regulations of the NRC, an agreement state, or a licensing state, be authorized to mount the device, collect the sample to be analyzed by a specific licensee for radioactive material leakage, perform maintenance of the device consisting of replacement of labels, rust and corrosion prevention, and for fixed gauges, repair and maintenance of sealed source holder mounting brackets, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated annual doses associated with such activity or activities, and bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices in accordance with the general license, is unlikely to cause that individual to receive an annual dose in excess of 10% of the limits specified in §289.202(f) of this title.

(4) Before the device may be transferred, each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall furnish:

(A) a copy of the general license in §289.251(f)(4)(H) of this title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(f)(4)(H) of this title;

(B) a copy of the general license in the NRC's, agreement state's, or licensing state's regulation equivalent to §289.251(f)(4)(H) of this title, or alternatively, a copy of the general license in §289.251(f)(4)(H) of this title to each person to whom the licensee directly commercially distributes radioactive material in a device for use in accordance with the general license of the NRC, the agreement state, or the licensing state. If certain requirements of the regulations do not apply to the particular device, those requirements may be omitted. If a copy of the general license in §289.251(f)(4)(H) of this title is furnished to such a person, it shall be accompanied by an explanation that the use of the device is regulated by the NRC, agreement state, or licensing state in accordance with requirements substantially the same as those in §289.251(f)(4)(H) of this title;

(C) a copy of §289.251(g) of this title;

(D) a list of the services that can only be performed by a specific licensee;

(E) information on acceptable disposal options including estimated costs of disposal;

(F) the name or position, address, and phone number of a contact person at the agency, an agreement state, or licensing state, or the NRC from which additional information may be obtained; and

(G) an indication that it is the NRC's policy to issue high civil penalties for improper disposal if the device is commercially distributed to a general licensee of the NRC.

(5) An alternative approach to informing customers may be submitted by the licensee for approval by the agency.

(6) In the case of a transfer through an intermediate person, each licensee who commercially distributes radioactive material in a device for use in accordance with the general license in §289.251(f)(4)(H) of this title, shall furnish the information in paragraph (4) of this subsection to the intended user prior to the initial transfer to the intermediate person.

(7) Each person licensed in accordance with this subsection to commercially distribute devices to generally licensed persons shall:

(A) report to the agency all commercial distributions of devices to persons for use in accordance with the general license in §289.251(f)(4)(H) of this title and all receipts of devices from general licensees licensed in accordance with §289.251(f)(4)(H) of this title.

(i) The report shall:

(I) cover each calendar quarter;

(II) be filed within 30 days thereafter;

(III) be submitted on a form prescribed by the agency or in a clear and legible report containing all of the data required by the form;

(IV) clearly indicate the period covered by the report;

(V) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(VI) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use;

(VII) identify an individual by name, title, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VIII) identify the type, model and serial number of device, and serial number of sealed source commercially distributed;

(IX) identify the quantity and type of radioactive material contained in the device; and

(X) include the date of transfer.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include the information in accordance with paragraph (7)(A)(i) of this subsection for both the intended user and each intermediate person and clearly designate the intermediate person(s).

(iii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(4)(H) of this title during the reporting period, the report shall so indicate.

(iv) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(B) report the following to the NRC to include covering each calendar quarter to be filed within 30 days thereafter, clearly indicating the period covered by the report, the identity of the specific licensee submitting the report, and the license number of the specific licensee:

(i) all commercial distributions of such devices to persons for use in accordance with the NRC general license in Title 10, CFR, §31.5 and all receipts of devices from general licensees in areas under NRC jurisdiction including the following:

(I) identity of each general licensee by name and address;

(II) the type, model and serial number of device, and serial number of sealed source commercially distributed;

(III) the quantity and type of radioactive material contained in the device;

(IV) the date of transfer; or

(ii) if the licensee makes changes to a device possessed in accordance with the general license in §289.251(f)(4)(H) of this title, such that the label must be changed to update required information, the report shall identify the licensee, the device, and the changes to information on the device label;

(iii) in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor;

(iv) if no commercial distributions have been made to the NRC licensees during the reporting period; the report shall so indicate;

(C) report to the appropriate agreement state or licensing state all transfers of devices manufactured and commercially distributed in accordance with this subsection for use in accordance with a general license in that state's requirements equivalent to

§289.251(f)(4)(H) of this title and all receipts of devices from general licensees.

(i) The report shall:

(I) be submitted within 30 days after the end of each calendar quarter in which such a device is commercially distributed to the generally licensed person;

(II) clearly indicate the period covered by the report;

(III) clearly identify the specific licensee submitting the report and include the license number of the specific licensee;

(IV) identify each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use an alternate address for the licensee shall be submitted along with the information on the actual location of use;

(V) identify an individual by name, position, and phone number who has knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(VI) the type, model and serial number of the device, and serial number of sealed source commercially distributed;

(VII) the quantity and type of radioactive material contained in the device; and

(VIII) date of receipt.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall also include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) If no commercial distributions have been made to persons in the agreement state or licensing state during the reporting period, the report shall so indicate.

(iv) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor; and

(D) keep records for three years following the date of the recorded event, showing the name, address, and the point of contact for each general licensee to whom the licensee directly or through an intermediate person commercially distributes radioactive material in devices for use in accordance with the general license provided in §289.251(f)(4)(H) of this title, or equivalent requirements of the NRC, an agreement state, or a licensing state.

(i) The records shall show the following:

(I) date of each commercial distribution;

(II) the isotope and the quantity of radioactivity in each device commercially distributed;

(III) the identity of any intermediate person; and

(IV) compliance with the reporting requirements of this subsection.

(ii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(4)(H) of this title during the reporting period, the records shall so indicate.

(8) If a notification of bankruptcy has been made in accordance with subsection (x)(4) of this section or the license is to be terminated, each person licensed under this subsection shall provide, upon request to the NRC and to any appropriate agreement state or licensing state, records of final disposition required under subsection (y)(16)(A) of this section.

(9) Each device that is transferred after February 19, 2002, shall meet the labeling requirements in accordance with paragraph (1)(C) - (E) of this subsection.

(m) Specific licenses for the manufacture, assembly, or repair of luminous safety devices for use in aircraft for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(B) of this title. In addition to the requirements in subsection (e) of this section, a specific license to manufacture, assemble, or repair luminous safety devices containing tritium or promethium-147 for use in aircraft, for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(B) of this title, will be issued if the agency approves the information submitted by the applicant. The information shall satisfy the requirements of Title 10, CFR, §§32.53, 32.54, 32.55, 32.56, and 32.101 or their equivalent.

(n) Specific licenses for the manufacture of calibration sources containing americium-241, plutonium, or radium-226 for commercial distribution to persons generally licensed in accordance with §289.251(f)(4)(D) of this title. In addition to the requirements in subsection (e) of this section, a specific license to manufacture calibration sources containing americium-241, plutonium, or radium-226 to persons generally licensed in accordance with §289.251(f)(4)(D) of this title will be issued if the agency approves the information submitted by the applicant. The information shall satisfy the requirements of Title 10, CFR, §§32.57, 32.58, 32.59, and 32.102, and 10 CFR 70.39 or their equivalent.

(o) Specific licenses for the manufacture and commercial distribution of sealed sources or devices containing radioactive material for medical use. In addition to the requirements in subsection (e) of this section, a specific license to manufacture and commercially distribute sealed sources and devices containing radioactive material to persons licensed for use of sealed sources listed in §289.256(bb), §289.256(cc), and §289.256(dd) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) an evaluation of the radiation safety of each type of sealed source or device including the following:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction of the sealed source or device;

(C) procedures for, and results of, prototype tests to demonstrate that the sealed source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) for devices containing radioactive material, the radiation profile of a prototype device;

(E) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

(F) procedures and standards for calibrating sealed sources and devices;

(G) instructions for handling and storing the sealed source or device from the radiation safety standpoint. These instructions are to be included on a durable label attached to the sealed source

or device or attached to a permanent storage container for the sealed source or device, provided that instructions that are too lengthy for the label may be summarized on the label and printed in detail on a brochure that is referenced on the label; and

(H) a legend and methods for labeling sources and devices as to their radioactive content;

(2) documentation that the label affixed to the sealed source or device, or to the permanent storage container for the sealed source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the name of the sealed source or device is licensed by the agency for commercial distribution to persons licensed for use of sealed sources in the healing arts or by equivalent licenses of the NRC, an agreement state, or a licensing state, provided that the labeling for sealed sources that do not require long-term storage may be on a leaflet or brochure that accompanies the sealed source;

(3) documentation that in the event the applicant desires that the sealed source or device be required to be tested for radioactive material leakage at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the sealed source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of radioactive material leakage from the sealed source; and

(4) documentation that in determining the acceptable interval for testing radioactive material leakage, information will be considered that includes, but is not limited to the following:

(A) primary containment (sealed source capsule);

(B) protection of primary containment;

(C) method of sealing containment;

(D) containment construction materials;

(E) form of contained radioactive material;

(F) maximum temperature withstood during prototype tests;

(G) maximum pressure withstood during prototype tests;

(H) maximum quantity of contained radioactive material;

(I) radiotoxicity of contained radioactive material; and

(J) operating experience with identical sealed sources or devices or similarly designed and constructed sealed sources or devices.

(p) Specific licenses for the manufacture and commercial distribution of radioactive material for certain *in vitro* clinical or laboratory testing in accordance with the general license. In addition to the requirements in subsection (e) of this section, a specific license to manufacture or commercially distribute radioactive material for use in accordance with the general license in §289.251(f)(4)(G) of this title will be issued if the agency approves the following information submitted by the applicant:

(1) that the radioactive material will be prepared for distribution in prepackaged units of:

(A) iodine-125 in units not exceeding 10 microcuries (μCi) each;

(B) iodine-131 in units not exceeding 10 μCi each;

(C) carbon-14 in units not exceeding 10 μCi each;

(D) hydrogen-3 (tritium) in units not exceeding 50 μCi each;

(E) iron-59 in units not exceeding 20 μCi each;

(F) cobalt-57 in units not exceeding 10 μCi each;

(G) selenium-75 in units not exceeding 10 μCi each; or

(H) mock iodine-125 in units not exceeding 0.05 μCi of iodine-129 and 0.005 μCi of americium-241 each;

(2) that each prepackaged unit bears a durable, clearly visible label:

(A) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 μCi of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 50 μCi of hydrogen-3 (tritium); 20 μCi of iron-59; or mock iodine-125 in units not exceeding 0.05 μCi of iodine-129 and 0.005 μCi of americium-241; and

(B) displaying the radiation caution symbol in accordance with §289.202(z) of this title and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals";

(3) that one of the following statements, as appropriate, or a substantially similar statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure that accompanies the package:

(A) option 1:

Figure: 25 TAC §289.252(p)(3)(A) (No change.)

(B) option 2:

Figure: 25 TAC §289.252(p)(3)(B) (No change.)

(4) that the label affixed to the unit, or the leaflet or brochure that accompanies the package, contains adequate information as to the precautions to be observed in handling and storing the radioactive material. In the case of a mock iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements of §289.202(ff) of this title.

(q) Specific licenses for the manufacture and commercial distribution of ice detection devices. In addition to the requirements of subsection (e) of this section, a specific license to manufacture and commercially distribute ice detection devices to persons generally licensed in accordance with §289.251(f)(4)(E) of this title will be issued if the agency approves the information submitted by the applicant. This information shall satisfy the requirements of Title 10, CFR, §§32.61, 32.62, and 32.103.

(r) Specific licenses for the manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive materials for medical use.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture, prepare, or transfer for commercial distribution, radioactive drugs containing radioactive material for use by persons authorized in accordance with §289.256 of this title will be issued if the agency approves the following information submitted by the applicant:

(A) evidence that the applicant is at least one of the following:

(i) registered or licensed with the United States Food and Drug Administration (FDA) as a drug manufacturer;

(ii) registered or licensed with a state agency as a drug manufacturer; or

(iii) licensed as a pharmacy by the Texas State Board of Pharmacy;

(B) radionuclide data relating to the following:

(i) chemical and physical form;

(ii) maximum activity per vial, syringe, generator, or other container of the radioactive drug;

(iii) shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(C) labeling requirements including the following:

(i) that each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution shall include the following:

(I) radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL;"

(II) name of the radioactive drug or its abbreviation;

(III) quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half life greater than 100 days); and

(ii) that each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution shall include the following:

(I) radiation symbol and the words, "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL;"

(II) name of the radioactive drug or its abbreviation;

(III) quantity of radioactivity at a specified date and time (the time may be omitted for radioactive drugs with a half life greater than 100 days); and

(IV) an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield.

(2) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs and shall have procedures for the use of the instrumentation. The licensee shall measure, by direct measurement or by a combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(A) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary;

(B) check each instrument for constancy and proper operation at the beginning of each day of use; and

(C) maintain records of the tests and checks in this paragraph for a minimum of three years for inspection by the agency.

(3) A licensee described in paragraph (1)(A)(iii) of this subsection shall prepare radioactive drugs for medical use as described in §289.256 of this title with the following provisions:

(A) radioactive drugs shall be prepared by a nuclear pharmacist(s) designated in the application as the individual user(s) who has completed the training and experience requirements specified in §289.256 of this title;

(B) the radiopharmaceuticals for human use shall be processed and prepared according to instructions that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit;

(C) if the authorized nuclear pharmacist elutes generators or processes radioactive material with the reagent kit in a manner that deviates from instructions furnished by the manufacturer on the label attached to or in the leaflet or brochure that accompanies the generator or reagent kit or in the accompanying leaflet or brochure, a complete description of the deviation shall be made and maintained for inspection by the agency for a period of three years; and

(D) provide to the agency a copy of each individual's certification by the Texas State Board of Pharmacy or the permit issued by a licensee of broad scope, and a copy of the state pharmacy license. If the licensee adds a nuclear pharmacist(s) to the license, this shall be completed no later than 30 days after the date that the licensee allows the individual(s) to work as a nuclear pharmacist.

(4) Nothing in this subsection relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

(s) Specific licenses for the manufacture and commercial distribution of products containing depleted uranium for mass-volume applications.

(1) In addition to the requirements in subsection (e) of this section, a specific license to manufacture products and devices containing depleted uranium for use in accordance with §289.251(f)(3)(D) of this title or equivalent regulations of the NRC or an agreement state, will be issued if the agency approves the following information submitted by the applicant:

(A) the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the product or device to provide reasonable assurance that possession, use, or commercial distribution of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one year a radiation dose in excess of 10% of the limits specified in §289.202(f) of this title; and

(B) reasonable assurance is provided that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of a product or device whose unique benefits are questionable, the agency will issue a specific license in accordance with paragraph (1) of this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The agency may deny any application for a specific license in accordance with this subsection if the end use(s) of the product or device cannot be reasonably foreseen.

(4) Each person licensed in accordance with paragraph (1) of this subsection shall:

(A) maintain the level of quality control required by the license in the manufacture of the product or device, and in the installation of the depleted uranium into the product or device;

(B) label or mark each unit to:

(i) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) state that the receipt, possession, use, and commercial distribution of the product or device are subject to a general license or the equivalent and the requirements of the NRC or of an agreement state;

(C) assure that before being installed in each product or device, the depleted uranium has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

(D) furnish a copy of the following:

(i) the general license in §289.251(f)(3)(D) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license in §289.251(f)(3)(D) of this title;

(ii) the NRC's or agreement state's requirements equivalent to the general license in §289.251(f)(3)(D) of this title and a copy of the NRC's or agreement state's certificate; or

(iii) alternately, a copy of the general license in §289.251(f)(3)(D) of this title to each person to whom the licensee commercially distributes depleted uranium in a product or device for use in accordance with the general license of the NRC or an agreement state;

(E) report to the agency all commercial distributions of products or devices to persons for use in accordance with the general license in §289.251(f)(3)(D) of this title.

(i) The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is commercially distributed to the generally licensed person and shall include the following:

(I) identity of each general licensee by name and address;

(II) identity of an individual by name and/or position who may constitute a point of contact between the agency and the general licensee;

(III) the type and model number of devices commercially distributed; and

(IV) the quantity of depleted uranium contained in the product or device.

(ii) If no commercial distributions have been made to persons generally licensed in accordance with §289.251(f)(3)(D) of this title during the reporting period, the report shall so indicate;

(F) report to the NRC and each responsible agreement state agency all commercial distributions of industrial products or devices to persons for use in accordance with the general license in the NRC's or agreement state's equivalent requirements to §289.251(f)(3)(D) of this title. The report shall meet the provisions of subparagraph (E)(i) and (ii) of this paragraph; and

(G) keep records showing the name, address, and point of contact for each general licensee to whom the licensee commercially distributes depleted uranium in products or devices for use in accordance with the general license provided in §289.251(f)(3)(D) of this title or equivalent requirements of the NRC or of an agreement state. The records shall be maintained for a period of two years for inspection by the agency and shall show the date of each commercial distribution, the quantity of depleted uranium in each product or device commercially distributed, and compliance with the report requirements of this section.

(t) Specific licenses for the processing of loose radioactive material for manufacture and commercial distribution. In addition to the requirements in subsection (e) of this section, a license to process loose radioactive material for manufacture and commercial distribution of radioactive material to persons authorized to possess such radioactive material in accordance with this chapter will be issued if the agency approves the following information submitted by the applicant:

(1) radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(2) intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) American National Standards Institute (ANSI) testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of the facility to include, but not be limited to:

(A) air filtration;

(B) ventilation system;

(C) plumbing; and

(D) radioactive material handling systems and, when applicable, remote handling hot cells;

(4) details of the environmental monitoring program; and

(5) documentation of training as specified in subsection (jj)(1) of this section for all personnel who will be handling radioactive materials.

(u) Specific licenses for other manufacture and commercial distribution of radioactive material. In addition to the requirements in subsection (e) of this section, a license to manufacture and commercially distribute radioactive material to persons authorized to possess such radioactive material in accordance with these requirements will be issued if the agency approves the following information submitted by the applicant:

(1) the radionuclides to be used, including the chemical and/or physical form and the maximum activity of each radionuclide;

(2) the intended use of each radionuclide and the sealed sources and/or other products to be manufactured that includes:

(A) receipt of radioactive material;

(B) chemical or physical preparations;

(C) sealed source construction;

(D) final assembly or processing;

(E) quality assurance testing;

(F) quality control program;

(G) leak testing;

(H) ANSI testing procedures;

(I) transportation containers;

(J) shipping procedures; and

(K) disposition of unwanted or unused radioactive material;

(3) scaled drawings of radioactive material handling systems; and

(4) documentation of training as specified in subsection (jj)(1) of this section for all personnel who will be handling radioactive material.

(v) Sealed source or device evaluation. Except as provided in paragraphs (7) and (8) of this subsection, sealed sources and devices shall only be authorized for use on radioactive material licenses in accordance with the information contained in the safety evaluation.

(1) An applicant shall submit a request to the agency for evaluation of radiation safety information on the sealed source or device containing a sealed source.

(2) The request for review shall be submitted in duplicate accompanied by the appropriate fee in §289.204 of this title.

(3) The request for review shall contain sufficient information about the sealed source or device to include the following:

(A) the radioactive material contained, its chemical and physical form, and amount;

(B) details of design and construction;

(C) procedures for, and results of, prototype tests to demonstrate that the sealed source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents;

(D) details of quality control procedures to assure that production of sealed sources and devices meet the standards of the design and prototype tests;

(E) labeling;

(F) proposed uses; and

(G) procedures for leak testing.

(4) For a device containing radioactive material, the request shall also contain sufficient information about the device to include:

(A) the radiation profile of a prototype device;

(B) method of installation;

(C) service and maintenance requirements; and

(D) operating and safety instructions.

(5) After review of the request, the agency may issue an evaluation documenting the information in paragraphs (3) and (4) of this subsection.

(6) The applicant submitting the request for evaluation of the safety information about the product shall manufacture and distribute or cause the product to be manufactured or distributed in accordance with:

(A) the statements and representations contained in the request;

(B) documentation required to support the request;

(C) the provisions of the evaluation; and

(D) all applicable provisions contained in a radioactive material license.

(7) Custom (manufactured in accordance with the unique specifications of, and use by, a single licensee) sources and devices shall be evaluated using the criteria in paragraphs (1) - (6) of this subsection.

(8) Sealed sources or devices used for calibration and reference sources of 100 μCi or less for beta or gamma-emitting radionuclides and 10 μCi or less for alpha-emitting radionuclide do not require radiation safety evaluations.

(9) Sealed sources or devices used in research and development that have not had safety evaluations.

(A) For sealed sources or devices used in research and development, the following shall be submitted:

(i) the radioactive material contained, its chemical and physical form, and amount;

(ii) details of the design and construction sufficient to determine that no obvious mechanical flaws exist;

(iii) information that demonstrates that sealed sources meet ANSI/HPS N43.6-1997 criteria for the particular category of use and that devices will maintain their integrity during normal use and accident conditions; and

(iv) procedures for use that demonstrate a safe environment for users and others nearby.

(B) For custom (one-of-a-kind) sealed sources or devices used in research and development, the licensee shall be qualified by sufficient training and experience and have sufficient facilities and equipment to safely use the requested quantity of radioactive material in unsealed form.

(w) Issuance of specific licenses.

(1) When the agency determines that an application meets the requirements of the Act and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing the conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in any license at the time of issuance, or thereafter by amendment, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this section as the agency deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety and the environment;

(B) require reports and the keeping of records, and to provide for inspections of activities in accordance with the license as may be appropriate or necessary; and

(C) prevent loss or theft of radioactive material subject to this chapter.

(3) The agency may request, and the licensee shall provide, additional information after the license has been issued to enable the agency to determine whether the license should be modified in accordance with subsection (dd) of this section.

(x) Specific terms and conditions of licenses.

(1) Each license issued in accordance with this section shall be subject to the applicable provisions of the Act and to applicable rules, now or hereafter in effect, and orders of the agency.

(2) No license issued or granted in accordance with this section and no right to possess or utilize radioactive material granted by any license issued in accordance with this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and to applicable rules, now or hereafter in effect, and orders of the agency, and shall give its consent in writing.

(3) Each person licensed by the agency in accordance with this section shall confine use and possession of the radioactive material licensed to the locations and purposes authorized in the license.

(4) The licensee shall notify the agency, in writing within 15 calendar days, of any of the following changes:

(A) name;

(B) mailing address; or

(C) RSO.

(5) Each licensee shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by the licensee or its parent company, if the parent company is involved in the bankruptcy.

(6) The notification in paragraph (4) of this subsection shall include:

(A) the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date of the filing of the petition.

(7) A copy of the petition for bankruptcy shall be submitted to the agency along with the written notification.

(8) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license, the agency may consider the technical competence and compliance history of an applicant or holder of a license. After an opportunity for a hearing, the agency shall deny an application for a license, an amendment to a license, or renewal of a license if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the license.

(y) Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(1) Except as provided in paragraph (2) of this subsection and subsection (z)(2) of this section, each specific license expires at the end of the day, in the month and year stated in the license. Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(2) Expiration of the specific license does not relieve the licensee of the requirements of this chapter.

(3) All license provisions continue in effect beyond the expiration date, with respect to possession of radioactive material until the agency notifies the former licensee in writing that the provisions of the license are no longer binding. During this time, the former licensee shall:

(A) be limited to actions involving radioactive material that are related to decommissioning; and

(B) continue to control entry to restricted areas until the location(s) is suitable for release for unrestricted use in accordance with the requirements in §289.202(ddd) of this title.

(4) Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building and/or outdoor area is suitable for release in accordance with §289.202(eee) of this title, or submit within 12 months of notification a decommissioning plan, if required by paragraph (7) of this subsection, and begin decommissioning upon approval of that plan if:

(A) the license has expired or has been revoked in accordance with this subsection or subsection (dd) of this section;

(B) the licensee has decided to permanently cease principal activities, as defined in §289.201(b) of this title, at the entire site or in any separate building or outdoor area;

(C) no principal activities under the license have been conducted for a period of 24 months; or

(D) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with §289.202(eee) of this title.

(5) Coincident with the notification required by paragraph (4) of this subsection, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee in accordance with subsection (gg) of this section in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, with agency approval, to cover the detailed cost estimate for decommissioning established in accordance with paragraph (10)(E) of this subsection.

(6) The agency may grant a request to delay or postpone initiation of the decommissioning process if the agency determines that such relief is not detrimental to the occupational and public health and safety and is otherwise in the public interest. The request shall be submitted no later than 30 days before notification in accordance with paragraph (4) of this subsection. The schedule for decommissioning set forth in paragraph (4) of this subsection may not commence until the agency has made a determination on the request.

(7) A decommissioning plan shall be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(A) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(B) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(C) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(D) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(8) The agency may approve an alternate schedule for submittal of a decommissioning plan required in accordance with paragraph (4) of this subsection if the agency determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the occupational and public health and safety and is otherwise in the public interest.

(9) The procedures listed in paragraph (7) of this subsection may not be carried out prior to approval of the decommissioning plan.

(10) The proposed decommissioning plan for the site or separate building or outdoor area shall include the following:

(A) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(B) a description of planned decommissioning activities;

(C) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(D) a description of the planned final radiation survey;

(E) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(F) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (15) of this subsection.

(11) The proposed decommissioning plan will be approved by the agency if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(12) Except as provided in paragraph (14) of this subsection, licensees shall complete decommissioning of the site or separate building or outdoor areas as soon as practicable but no later than 24 months following the initiation of decommissioning.

(13) Except as provided in paragraph (14) of this subsection, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

(14) The agency may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the agency determines that the alternative is warranted by consideration of the following:

(A) whether it is technically feasible to complete decommissioning within the allotted 24 month period;

(B) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24 month period;

(C) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(D) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(E) other site-specific factors that the agency may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(15) As the final step in decommissioning, the licensee shall do the following:

(A) certify the disposition of all licensed material, including accumulated wastes; and

(B) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title. The licensee shall do the following, as appropriate:

(i) report the following levels:

(I) gamma radiation in units of microroentgen per hour (μR/hr) (millisieverts per hour (mSv/hr)) at 1 meter (m) from surfaces;

(II) radioactivity, including alpha and beta, in units of disintegrations per minute (dpm) or microcuries (μCi) (megabecquerels (MBq)) per 100 square centimeters (cm^2) for surfaces;

(III) μCi (MBq) per milliliter for water; and

(IV) picocuries (pCi) (becquerels (Bq)) per gram (g) for solids such as soils or concrete; and

(ii) specify the manufacturer's name and model and serial number of survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(16) The agency will provide written notification to specific licensees, including former licensees with provisions continued in effect beyond the expiration date in accordance with paragraph (3) of this subsection, that the provisions of the license are no longer binding. The agency will provide such notification when the agency determines that:

(A) radioactive material has been properly disposed;

(B) reasonable effort has been made to eliminate residual radioactive contamination, if present;

(C) a radiation survey has been performed that demonstrates that the premises are suitable for release in accordance with the radiological requirements for license termination specified in

§289.202(ddd) of this title, or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the radiological requirements for license termination specified in §289.202(ddd) of this title; and

(D) any outstanding fees in accordance with §289.204 of this title are paid and any outstanding notices of violations of this chapter or of license conditions are resolved.

(17) Each licensee shall submit to the agency all records required by §289.202(nn)(2) of this title before the license is terminated.

(z) Renewal of licenses.

(1) Requests for renewal of specific licenses shall be filed in accordance with subsection (d)(1) - (3) and (5) - (7) of this section. In any application for renewal, the applicant may incorporate drawings by clear and specific reference (for example, title, date and unique number of drawing), if no modifications have been made since previously submitted.

(2) In any case in which a licensee, not less than 30 days prior to expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the request has been finally determined by the agency. In any case in which a licensee, not more than 90 days after the expiration of an existing license, has filed a request in proper form for renewal or for a new license authorizing the same activities, the agency may reinstate the license and extend the expiration until the request has been finally determined by the agency. The requirements in this subsection are subject to the provisions of Government Code, §2001.054.

(3) An application for technical renewal of a license will be approved if the agency determines that the requirements of subsection (e) of this section have been satisfied.

(aa) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license shall be filed in accordance with subsection (d)(1) - (3) of this section shall be signed by management or the RSO, and shall specify the respects in which the licensee desires a license to be amended and the grounds for the amendment.

(2) Requests for amendments to delete a subsite from a license shall be filed in accordance with subsections (d)(1) and (2) and (y)(3) and (15) of this section.

(bb) Agency action on requests to renew or amend. In considering a request by a licensee to renew or amend a license, the agency will apply the criteria in subsection (e) of this section as applicable.

(cc) Transfer of material.

(1) No licensee shall transfer radioactive material except as authorized in accordance with this chapter. This subsection does not include transfer for commercial distribution.

(2) Except as otherwise provided in a license and subject to the provisions of paragraphs (3) and (4) of this subsection, any licensee may transfer radioactive material:

(A) to the agency (A licensee may transfer material to the agency only after receiving prior approval from the agency.);

(B) to the United States Department of Energy (DOE);

(C) to any person exempt from this section to the extent permitted in accordance with such exemption;

(D) to any person authorized to receive such material in accordance with the terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the agency, the NRC, any agreement state, or any licensing state, or to any person otherwise authorized to receive such material by the federal government or any agency of the federal government, the agency, any agreement state, or any licensing state; or

(E) as otherwise authorized by the agency in writing.

(3) Before transferring radioactive material to a specific licensee of the agency, the NRC, an agreement state, or a licensing state, or to a general licensee who is required to register with the agency, the NRC, an agreement state, or a licensing state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by paragraph (3) of this subsection are acceptable.

(A) The transferor may possess and have read a current copy of the transferee's specific license.

(B) When a current copy of the transferee's specific license described in subparagraph (A) of this paragraph is not readily available or when a transferor desires to verify that information received is correct or up-to-date, the transferor may obtain and record confirmation from the agency, the NRC, or the licensing agency of an agreement state or a licensing state that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of subsection (ff) of this section.

(dd) Modification, suspension, and revocation of licenses.

(1) The terms and conditions of all licenses shall be subject to revision or modification. A license may be modified, suspended or revoked by reason of amendments to the Act, by reason of rules in this chapter, or orders issued by the agency.

(2) Any license may be revoked, suspended, or modified, in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required under provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a license on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this chapter, the license, or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(3) Each specific license revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the license, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(4) Except in cases in which the occupational and public health or safety requires otherwise, no license shall be suspended or revoked unless, prior to the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the licensee in writing and the licensee shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(ee) Reciprocal recognition of licenses.

(1) Subject to this section, any person who holds a specific license from NRC, any agreement state, or any licensing state, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is granted a general license to conduct the activities authorized in such licensing document within the State of Texas provided that:

(A) the licensing document does not limit the activity authorized by such document to specified installations or locations;

(B) the out-of-state licensee notifies the agency in writing at least three working days prior to engaging in such activity. If, for a specific case, the three-working-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities in accordance with the general license provided in this subsection. Such notification shall include:

(i) the exact location, start date, duration, and type of activity to be conducted;

(ii) the identification of the radioactive material to be used;

(iii) the name(s) and in-state address(es) of the individual(s) performing the activity;

(iv) a copy of the applicant's pertinent license;

(v) a copy of the licensee's operating, safety, and emergency procedures; and

(vi) a fee as specified in §289.204 of this title.

(C) the out-of-state licensee complies with all applicable rules of the agency and with all the terms and conditions of the licensee's licensing document, except any such terms and conditions that may be inconsistent with applicable rules of the agency;

(D) the out-of-state licensee supplies such other information as the agency may request; and

(E) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used in accordance with the general license provided in this subsection except by transfer to a person:

(i) specifically licensed by the agency, the NRC, another agreement state, or another licensing state to receive such material; or

(ii) exempt from the requirements for a license for such material in accordance with §289.251(e)(1) of this title.

(2) In addition to the provisions of paragraph (1) of this subsection, any person who holds a specific license issued by NRC, an agreement state, or a licensing state authorizing the holder to manufacture, transfer, install, or service the device described in §289.251(f)(4)(H) of this title, within areas subject to the jurisdiction of the licensing body, is granted a general license to install, transfer, demonstrate, or service the device in the State of Texas provided that:

(A) the person files a report with the agency within 30 days after the end of each calendar quarter in which any device is transferred to or installed in the state of Texas. Each report shall identify by name and address, each general licensee to whom the device is transferred, the type of device transferred by manufacturer's name, model and serial number of the device, and serial number of the sealed source, and the quantity and type of radioactive material contained in the device;

(B) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the NRC, an agreement state, or a licensing state;

(C) the person assures that any labels required to be affixed to the device in accordance with requirements of the authority that licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(D) the holder of the specific license furnishes to each general licensee to whom the holder of the specific license transfers the device, or on whose premises the holder of the specific license installs the device, a copy of the general license contained in §289.251(f)(4)(H) of this title.

(3) The agency may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed in accordance with the licensing document, upon determining that the action is necessary in order to prevent undue hazard to occupational and public health and safety and the environment.

(ff) Preparation of radioactive material for transport. Requirements for the preparation of radioactive material for transport are specified in §289.257 of this title.

(gg) Financial assurance and record keeping for decommissioning.

(1) The applicant for a specific license or renewal of a specific license, or holder of a specific license, authorizing the possession and use of radioactive material shall submit and receive written authorization for a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license for the following situations:

(A) when unsealed radioactive material requested or authorized on the license, with a half-life greater than 120 days, is in quantities exceeding 10^5 times the applicable quantities set forth in subsection (jj)(2) of this section;

(B) when a combination of the unsealed radionuclides requested or authorized on the license, with a half-life greater than 120 days, results in the R of the radionuclides divided by 10^5 being greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in subsection (jj)(2) of this section; or

(C) when sealed sources or plated foils requested or authorized on the license, with a half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in subsection (jj)(2) of this section (or when a combination of isotopes is involved if R, as defined in this subsection, divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (4) of this subsection.

(2) The applicant for a specific license or renewal of a specific license or the holder of a specific license authorizing possession and use of radioactive material as specified in paragraph (3) of this subsection shall either:

(A) submit a decommissioning funding plan as described in paragraph (4) of this subsection in an amount sufficient to

allow the agency to engage a third party to decommission the site(s) specified on the license; or

(B) submit financial assurance for decommissioning in the amount in accordance with paragraph (3) of this subsection using one of the methods described in paragraph (6) of this subsection in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license.

(3) The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license and is determined as follows:

(A) $1,125,000 for quantities of material greater than 10^4 but less than or equal to 10^5 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.);

(B) $225,000 for quantities of material greater than 10^3 but less than or equal to 10^4 times the applicable quantities in subsection (jj)(2) of this section in unsealed form. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^3 is greater than 1 but R divided by 10^4 if less than or equal to 1); or

(C) $113,000 for quantities of material greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities in subsection (jj)(2) of this section in sealed sources or plated foils. (For a combination of radionuclides, if R, as defined in paragraph (1) of this subsection, divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1.)

(4) Each decommissioning funding plan shall contain a cost estimate for decommissioning in an amount sufficient to allow the agency to engage a third party to decommission the site(s) specified on the license and a description of the method of assuring funds for decommissioning from paragraph (6) of this subsection, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. The required amount of financial assurance for decommissioning is determined by the quantity of material authorized by the license. Upon approval of the decommissioning funding plan by the agency, the amount of financial assurance shall be adjusted and submitted in conformance with the agency approval.

(5) Financial assurance in conjunction with a decommissioning funding plan shall be submitted as follows:

(A) for an applicant for a specific license, financial assurance as described in paragraph (6) of this subsection, may be obtained after the application has been approved and the license issued by the agency, but shall be submitted to the agency prior to receipt of licensed material; or

(B) for an applicant for renewal of a specific license, or a holder of a specific license, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (6) of this subsection shall be submitted with the decommissioning funding plan.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods. The financial instrument obtained shall be continuous for the term of the license in a form prescribed by the agency. The applicant or licensee shall obtain written approval of the financial instrument or any amendment to it from the agency.

(A) Prepayment. Prepayment is the deposit into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(B) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(3) of this section. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in subsection (jj)(4) of this section. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in subsection (jj)(5) of this section. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in subsection (jj)(6) of this section. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions.

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the agency, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the agency within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable in the State of Texas to the Radiation and Perpetual Care Account.

(iii) The surety method or insurance shall remain in effect until the agency has terminated the license.

(C) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be in accordance with subparagraph (B) of this paragraph.

(D) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount in accordance with paragraph (4) of this subsection, and indicating that funds for decommissioning will be obtained when necessary.

(E) When a governmental entity is assuming custody and ownership of a site, there shall be an arrangement that is deemed acceptable by such governmental entity.

(7) Each person licensed in accordance with this section shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning consists of the following:

(A) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas, as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(B) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes that may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(C) except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(i) all areas designated and formerly designated as restricted areas as defined in §289.201(b) of this title;

(ii) all areas outside of restricted areas that require documentation under subparagraph (A) of this paragraph; and

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented in accordance with §289.202(tt) of this title; and

(D) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds.

(8) Any licensee who has submitted an application before January 1, 1995, for renewal of license in accordance with this section shall provide financial assurance for decommissioning in accordance with paragraphs (1) and (2) of this subsection.

(hh) Emergency plan for responding to a release.

(1) A new or renewal application for each specific license to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in subsection (jj)(7) of this section shall contain either:

(A) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive material would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(B) an emergency plan for responding to a release of radioactive material.

(2) One or more of the following factors may be used to support an evaluation submitted in accordance with paragraph (1)(A) of this subsection:

(A) the radioactive material is physically separated so that only a portion could be involved in an accident;

(B) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(C) the release fraction in the respirable size range would be lower than the release fraction in subsection (jj)(7) of this section due to the chemical or physical form of the material;

(D) the solubility of the radioactive material would reduce the dose received;

(E) facility design or engineered safety features in the facility would cause the release fraction to be lower than that in subsection (jj)(7) of this section;

(F) operating restrictions or procedures would prevent a release fraction as large as that in subsection (jj)(7) of this section; or

(G) other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted in accordance with paragraph (1)(B) of this subsection shall include the following information.

(A) Facility description. A brief description of the licensee's facility and area near the site.

(B) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(C) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(D) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(E) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

(F) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(G) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the agency; also, responsibilities for developing, maintaining, and updating the plan.

(H) Notification and coordination. A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the agency immediately after notification of the appropriate offsite response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements in accordance with the Emergency Planning and Community Right-to-Know-Act of 1986, Title III, Publication L. 99-499 or other state or federal reporting requirements.

(I) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to offsite response organizations and to the agency.

(J) Training. A brief description of the frequency, performance objectives, and plans for the training that the licensee will provide workers on how to respond to an emergency, including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(K) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(L) Exercises. Provisions for conducting quarterly communications checks with offsite response organizations at intervals not to exceed three months and biennial onsite exercises to test response to simulated emergencies. Communications checks with offsite response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(M) Hazardous chemicals. A certification that the applicant has met its responsibilities in accordance with the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Publication L. 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(4) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the agency. The licensee shall provide any comments received within the 60 days to the agency with the emergency plan.

(ii) Increased controls. Licensees possessing sources containing radioactive material, at any given time, in quantities greater than or equal to the quantities of concern listed in subsection (jj)(9) of this section shall:

(1) control access at all times to radioactive material and devices containing such radioactive material (devices) in quantities in accordance with subsection (jj)(9) of this section; and

(2) limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

(A) The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices.

(B) The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

(C) For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

(D) Service providers shall be escorted unless determined to be trustworthy and reliable by an U.S. Nuclear Regulatory Commission (NRC) required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

(E) The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

(3) Each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices in use or in storage. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the values listed in subsection (jj)(9) of this section.

(A) The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

(B) The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.

(C) The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

(D) After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the NRC Operations Center at (301) 816-5100.

(E) The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed but are less than 100 times those listed in subsection (jj)(9) of this section, per consignment, the licensee shall:

(A) Use carriers which:

(i) use package tracking systems;

(ii) implement methods to assure trustworthiness and reliability of drivers;

(iii) maintain constant control and/or surveillance during transit; and

(iv) have the capability for immediate communication to summon appropriate response or assistance.

(B) Verify and document that the carrier employs the measures in subparagraph (A) of this paragraph;

(C) Contact the recipient to coordinate the expected arrival time of the shipment;

(D) Confirm receipt of the shipment; and

(E) Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or is missing, the licensee shall immediately notify the NRC Operations Center at (301) 816-5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816-5100.

(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in subsection (jj)(9) of this section per consignment, the licensee shall:

(A) Notify the NRC Director, Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission, Washington, DC 20555, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

(B) Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements in subparagraph (A) of this paragraph shall not apply to future shipments of licensed radioactive material that exceeds 100 times the quantities listed in subsection (jj)(9) of this section. The licensee shall implement the ASMs for the transportation of RAM QC.

(6) If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of paragraph (5)(A) and (B) of this subsection shall not apply.

(7) If the licensee is to receive radioactive material greater than or equal to the quantities in subsection (jj)(9) of this section, per consignment, the licensee shall coordinate with the originator to:

(A) Establish an expected time of delivery; and

(B) Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

(8) Each licensee who possesses mobile or portable devices containing radioactive material in quantities greater than or equal to the values listed in subsection (jj)(9) of this section, shall:

(A) For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(B) For mobile devices:

(i) that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(ii) that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

(C) For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

(9) The licensee shall retain documentation required by these increased controls for inspection by the agency for three years after they are no longer effective.

(A) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

(B) Each time the licensee revises the list of approved persons required by paragraph (2)(E) of this subsection, or the documented program required by paragraph (3) of this subsection, the licensee shall retain the previous documentation for three years after the revision.

(C) The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

(D) The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

(E) After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

(A) The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

(B) The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

(i) general performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure;

(ii) protection of sensitive information during use, storage, and transit;

(iii) preparation, identification or marking, and transmission;

(iv) access controls;

(v) destruction of documents;

(vi) use of automatic data processing systems; and

(vii) removal from the licensee's sensitive information category.

(jj) Appendices.

(1) Subjects to be included in training courses:

(A) fundamentals of radiation safety:

(i) characteristics of radiation;

(ii) units of radiation dose (rem) and activity of radioactivity (curie);

(iii) significance of radiation dose;

(I) radiation protection standards; and

(II) biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose;

(I) time;

(II) distance; and

(III) shielding;

(vi) radiation safety practices, including prevention of contamination and methods of decontamination; and

(vii) discussion of internal exposure pathways;

(B) radiation detection instrumentation to be used:

(i) radiation survey instruments:

(I) operation;

(II) calibration; and

(III) limitations;

(ii) survey techniques;

(iii) individual monitoring devices;

(C) equipment to be used:

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage, control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment;

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's written operating, safety, and emergency procedures; and

(F) the licensee's record keeping procedures.

(2) Isotope quantities (for use in subsection (gg) of this section).

Figure: 25 TAC §289.252(jj)(2)

(3) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This paragraph establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(B) Financial test.

(i) To pass the financial test, the parent company shall meet the criteria of either subclause (I) or (II) of this clause.

(I) The parent company shall have:

(-a-) two of the following three ratios:

(-1-) a ratio of total liabilities to net worth less than 2.0;

(-2-) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and

(-3-) a ratio of current assets to current liabilities greater than 1.5;

(-b-) net working capital and tangible net worth each at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if a certification is used.)

(II) The parent company shall have:

(-a-) a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

(-b-) tangible net worth each at least six times the current decommissioning cost estimate for the total of all facilities or parts thereof (or prescribed amount if a certification is used);

(-c-) tangible net worth of at least $10 million; and

(-d-) assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if certification is used).

(ii) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(iii) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iv) If the parent company no longer meets the requirements of clause (i) of this subparagraph, the licensee shall send notice to the agency of intent to establish alternate financial assurance as specified in the agency's regulations. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets

the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Parent company guarantee. The terms of a parent company guarantee that an applicant or licensee obtains shall provide that:

(i) the parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the agency, as evidenced by the return receipts;

(ii) if the licensee fails to provide alternate financial assurance as specified in the agency's rules within 90 days after receipt by the licensee and the agency of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee;

(iii) the parent company guarantee and financial test provisions shall remain in effect until the agency has terminated the license; and

(iv) if a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(4) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes a financial test of subparagraph (B) of this paragraph. Subparagraph (B) of this paragraph establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self guarantee.

(B) Financial test.

(i) To pass the financial test, a company shall meet all of the following criteria:

(I) tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self guaranteeing licensee and as parent-guarantor);

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor); and

(III) a current rating for its most recent bond issuance of AAA, AA, A as issued by Standard and Poor's, or Aaa, Aa, A as issued by Moody's.

(ii) To pass the financial test, a company shall meet all of the following additional criteria:

(I) the company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(II) the company's independent certified public accountant shall have compared the data used by the company in the financial test that is derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(III) after the initial financial test, the company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(iii) If the licensee no longer meets the criteria of clause (i) of this subparagraph, the licensee shall send immediate notice to the agency of its intent to establish alternate financial assurance as specified in the agency's rules within 120 days of such notice.

(C) Company self guarantee. The terms of a self guarantee that an applicant or licensee furnishes shall provide that:

(i) the company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt;

(ii) the licensee shall provide alternate financial assurance as specified in the agency's rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee;

(iii) the guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee;

(iv) the licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission in accordance with the requirements of the Securities and Exchange Act of 1934, §13;

(v) if, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the criteria of subparagraph (B)(i) of this paragraph; and

(vi) the applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(5) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test a company shall meet the following criteria:

(I) tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(II) assets located in the United States amounting to at least 90% of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(III) a ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

(ii) In addition, to pass the financial test, a company shall meet all of the following requirements:

(I) the company's independent certified public accountant shall have compared the data used by the company in the financial test, that is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test;

(II) after the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(III) if the licensee no longer meets the requirements of subparagraph (B)(i) of this paragraph, the licensee shall send notice to the agency of intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternative financial assurance within 120 days after the end of such fiscal year.

(C) Company self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following.

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(6) Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit entities, such as colleges, universities, and nonprofit hospitals.

(A) Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of subparagraph (B) of this paragraph. The terms of the self-guarantee are in subparagraph (C) of this paragraph. This paragraph establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

(B) Financial test.

(i) To pass the financial test, a college or university shall meet the criteria of subclause (I) or (II) of this clause. The college or university shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's.

(II) for applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(ii) To pass the financial test, a hospital shall meet the criteria in subclause (I) or (II) of this clause. The hospital shall meet one of the following:

(I) for applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's;

(II) for applicants or licensees that do not issue bonds, all the following tests shall be met:

(-a-) (total revenues less total expenditures) divided by total revenues shall be equal to or greater than 0.04;

(-b-) long term debt divided by net fixed assets shall be less than or equal to 0.67;

(-c-) (current assets and depreciation fund) divided by current liabilities shall be greater than or equal to 2.55; and

(-d-) operating revenues shall be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

(iii) In addition, to pass the financial test, a licensee shall meet all the following requirements:

(I) the licensee's independent certified public accountant shall have compared the data used by the licensee in the financial test that is required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test;

(II) after the initial financial test, the licensee shall repeat passage of the test within 90 days after the close of each succeeding fiscal year;

(III) if the licensee no longer meets the requirements of subparagraph (A) of this paragraph, the licensee shall send notice to the agency of its intent to establish alternative financial assurance as specified in the agency's rules. The notice shall be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(C) Self-guarantee. The terms of a self-guarantee that an applicant or licensee furnishes shall provide the following:

(i) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the agency. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(ii) The licensee shall provide alternative financial assurance as specified in the agency's regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

(iv) The applicant or licensee shall provide to the agency a written guarantee (a written commitment by a corporate officer or officer of the institution) that states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of the fact to the agency within 20 days after publication of the change by the rating service.

(7) Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release. The following table contains quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.
Figure: 25 TAC §289.252(jj)(7)

(8) Requirements for demonstrating financial qualifications.

(A) If an applicant or licensee is not required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall demonstrate financial qualification by submitting attestation that the applicant or licensee is financially qualified to conduct the activity requested for licensure, including any required decontamination, decommissioning, reclamation, and disposal before the agency issues a license.

(B) If an applicant or licensee is required to submit financial assurance in accordance with subsection (gg) of this section, that applicant or licensee shall:

(i) submit one of the following:

(I) the bonding company report or equivalent (from which information can be obtained to calculate a ratios in clause (ii) of this subparagraph) that was used to obtain the financial assurance instrument used to meet the financial assurance requirement specified in subsection (gg) of this section. However, if the applicant or licensee posted collateral to obtain the financial instrument used to meet the requirement for financial assurance specified in subsection (gg) of this section, the applicant or licensee shall demonstrate financial qualification by one of the methods specified in subclause (II) or (III) of this clause;

(II) SEC documentation (from which information can be obtained to calculate a ratio as described in clause (ii) of this subparagraph, if the applicant or licensee is a publicly-held company); or

(III) a self-test (for example, an annual audit report certifying a company's assets and liabilities and resulting ratio as described in clause (ii) of this subparagraph or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues).

(ii) declare its Standard Industry Classification (SIC) code. Several companies publish lists, on an annual basis, of acceptable assets-to liabilities (assets divided by liabilities) ratio ranges for each type of SIC code. If an applicant or licensee submits documentation of its current assets and current liabilities or, in the case of a new company, a business plan specifying expected expenses versus capitalization and anticipated revenues, and the resulting ratio falls within an acceptable range as published by generally recognized companies (for example, Almanac of Business and Industrial Financial Ratios, Industry NORM and Key Business Ratios, Dun & Bradstreet Industry publications, and Manufacturing USA: Industry Analyses, Statistics, and Leading Companies), the agency will consider that applicant or licensee financially qualified to conduct the requested or licensed activity.

(C) If the applicant or licensee is a state or local government entity, a statement of such will suffice as demonstration that the government entity is financially qualified to conduct the requested or licensed activities.

(D) The agency will consider other types of documentation if that documentation provides an equivalent measure of assurance of the applicant's or licensee's financial qualifications as found in subparagraphs (A) and (B) of this paragraph.

(9) Radionuclide quantities of concern. The following methods shall be used to determine which sources of radioactive material require increased controls (ICs):

(A) include any single source equal to or greater than the quantity of concern;

(B) include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern;

(C) for combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: ((amount of radionuclide A) / (quantity of concern of radionuclide A)) + ((amount of radionuclide B) / (quantity of concern of radionuclide B)) + etc.....> 1; and

(D) quantities of radioactive materials used to determine quantities of concern. The following table contains quantities of radioactive materials to be used in determining a quantity of concern.
Figure: 25 TAC §289.252(jj)(9)(D)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801912
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 1, 2008
Proposal publication date: December 14, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.10

Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance, Division of Workers' Compensation ("Division") adopts amendments to §133.10, relating to required billing forms/formats. These amendments are adopted without changes to the proposal published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1232) as corrected in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1894).

The adopted amendment to §133.10(a)(3) is necessary to correct the inaccurate reference to Subchapter F as the subchapter that governs electronic billing ("eBilling"). Subchapter G contains the rules governing eBilling.

The adopted amendment to §133.10(b) replacing the current National Council for Prescription Drug Programs ("NCPDP") Universal Claim Form ("UCF") with the Division form DWC-66 ("DWC-66") or other mutually agreed upon qualifying alternate billing form as the prescribed paper billing form for pharmacy services is necessary because the current NCPDP UCF is not effectively adaptable for use in the Texas workers' compensation system and would bring unnecessary inefficiencies and costs into that system. The current NCPDP UCF was adopted for pharmacy billing in the Texas workers' compensation system because it is a nationally standardized pharmacy billing form that is used effectively in other healthcare delivery systems. However, prior to the NCPDP UCF's January 1, 2008 implementation date, workers' compensation system participants provided the Division with feedback indicating that unlike the DWC-66 the current NCPDP UCF is not a suitable pharmacy billing form for the Texas workers' compensation system.

The current NCPDP UCF was not specifically designed for use in the Texas workers' compensation system. When completed in accordance with its standard instructions, the NCPDP UCF does not capture all information that is necessary for pharmacy billing in Texas. To make the NCPDP UCF workable in the Texas workers' compensation system, the Division significantly modified the NCPDP UCF's standard instructions. These modified instructions, according to system participants, have made the NCPDP UCF a form that is difficult to complete accurately. For example, the NCPDP UCF does not contain a field for pharmacy benefit manager ("PBM") or pharmacy processing agent ("billing agent") information, information that is necessary in cases where a PBM or billing agent processes a pharmacy bill on behalf of a pharmacy. In order to capture this information, the Division's instructions require PBM and billing agent information to be placed in fields that describe other information. Further, when completed in accordance with the Division's instructions, the NCPDP UCF does not provide enough space for required carrier information. This necessitates very small fonts and/or data overflow into other data fields. The Division's instructions also place required information in white spaces, nonstandard locations on the form. The difficulty in completing the NCPDP UCF accurately in accordance with the Division's instructions can lead to a significant number of incorrectly completed and rejected bills. This would bring unnecessary inefficiencies and costs into the Texas workers' compensation system.

Further, system participants have had difficulty applying optical character recognition (OCR) technology to the NCPDP UCF, as modified by the Division's instructions, because the modified NCPDP UCF requires small fonts, possible data overflow, and the placement of data in nonstandard locations. OCR technology is labor saving technology used in automated systems that process paper billing forms. The difficulty in applying OCR technology to the modified NCPDP UCF would hinder the development of these automated systems and, thus, require increased manual intervention to process this form. This would increase the labor costs associated with processing paper pharmacy bills.

The DWC-66 is a paper billing form specifically designed for pharmacy billing in the Texas workers' compensation system. This form captures all information that is necessary for pharmacy billing in that system. System participants have used the DWC-66 for pharmacy billing since 1991 and this form was the prescribed pharmacy billing form until January 1, 2008. Because the DWC-66 was the prescribed pharmacy billing form for a significant period of time, system participants already have in place established procedures and automated systems, including automated systems that successfully apply OCR technology to the DWC-66, to process pharmacy bills submitted on the DWC-66. Readopting the DWC-66 as the prescribed billing form will prevent unnecessary inefficiencies and costs from being imposed upon the Texas workers' compensation system and will allow system participants to use their already established procedures and automated systems to process paper pharmacy bills. Further, this adopted amendment allows system participants to adopt an alternate billing form in lieu of the DWC-66 if there is a mutual agreement and the alternate billing form provides all the information required by the DWC-66. This will provide system participants with the flexibility to use other pharmacy billing forms such as other nationally standardized pharmacy billing forms that are effectively adaptable for use in the Texas workers' compensation system.

The adopted amendment to §133.10(c) is necessary in order to clarify that the current American Dental Association ("ADA") claim form is to be used by dentists to bill for dental services and not for professional medical services that use non-dental codes.

In addition to providing dental services, dentists may provide injured workers with professional medical services such as case management, certification of maximum medical improvement, and the assignment of impairment ratings. Billing for these types of professional medical services requires the use of non-den-

tal codes in the Healthcare Common Procedure Coding System (HCPCS). Dentists have used the current ADA claim form when billing for these types of professional medical services. Carriers reject such bills on the basis that the current ADA claim form is not the correct billing form for these types of professional medical services. The current ADA claim form was never intended to be used to bill for these types of professional medical services. The current ADA claim form is intended to be used by dentists when billing for dental services. In accordance with §133.10(a)(1), dentists are to use the standard forms used by the Centers for Medicare and Medicaid Services when billing for professional medical services that have non-dental codes. This adopted amendment clarifies the proper use of the current ADA claim form.

The adopted amendment to §133.10(a)(3) references Subchapter G as the subchapter that governs eBilling.

The adopted amendment to 133.10(b) removes the NCPDP UCF as the prescribed paper billing form for pharmacy billing and requires pharmacists and pharmacy processing agents to submit bills using the DWC-66. This adopted amendment allows pharmacists and pharmacy processing agents to submit bills using an alternate billing form in lieu of the DWC-66 if the insurance carrier approves the alternate billing form prior to submission by the pharmacist or pharmacy processing agent and the alternate billing form provides all the information required on the DWC-66.

The adopted amendment to §133.10(c) clarifies that the current ADA claim form is to be used by dentists when billing for dental services.

Comment: A commenter supports the amendment removing the NCPDP UCF as the required billing form for pharmacy services because this form is designed for use in the group health industry and does not translate well for use in the Texas workers' compensation system.

Agency Response: The Division agrees that the current NCPDP UCF was not developed as a workers' compensation specific billing form and is not effectively adaptable to the Texas workers' compensation system. The DWC-66 is a Texas specific workers' compensation billing form and therefore a better suited billing form for pharmacy services in Texas.

Comment: A commenter supports the amendment providing for the use of the DWC-66 or other mutually agreed upon form for pharmacy billing. Additionally, the commenter recommends modifying the medical billing rules regarding a clean claim to require a secondary generic NDC number only in cases where an injured worker requests a brand drug when a generic is prescribed by the physician rather than in all cases in which a brand drug is dispensed.

Agency Response: The commenter's request that the Division modify the medical billing rules regarding the clean claim requirements for pharmacy billing is outside the scope of this rule. However, the Division will consider the commenter's request.

For: PMSI

For with changes: Workers' Compensation Pharmacy Alliance (WCPA)

Against: None

These amendments are adopted under Labor Code §§413.053, 413.011, 413.0111, 408.0251, 402.00111, and 402.061. Labor Code §413.053 provides that the Commissioner of Workers' Compensation by rule shall establish standards of reporting and billing governing both form and content. Labor Code §413.011 requires the Commissioner of Workers' Compensation to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. This section also provides that the Commissioner of Workers' Compensation may adopt rules as necessary to implement this section. Labor Code §413.0111 provides that the rules adopted by the Commissioner of Workers' Compensation for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on behalf of the pharmacies under terms and conditions agreed on by the pharmacies. Labor Code §408.0251 provides that the Commissioner of Workers' Compensation, by rule and in cooperation with the Commissioner of Insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. This section also provides that the Commissioner of Workers' Compensation shall by rule establish criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801916
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: May 1, 2008
Proposal publication date: February 15, 2008
For further information, please call: (512) 804-4715

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.34

The Texas Water Development Board (board) adopts an amendment to §363.34, relating to criteria for listing financial guarantors

acceptable to the board, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2260) and will not be republished. The amendment adds the word "stable" after the word "triple-A" to clarify that the board will consider placement on the list of authorized financial guarantors only those entities who have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The amendment was proposed because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

No comments were received regarding adoption of the amendment.

The amendment to §363.34 is authorized pursuant to Texas Water Code §15.005 relating to Consideration of Certain Applications relating to flood control projects from the Water Loan Assistance Program, §15.105 relating to Considerations in Passing on Applications from the Water Loan Assistance Program, §15.403 relating to rules to carry out the Research and Planning Program, §15.403 relating to rules for Water and Wastewater Financial Assistance for Disadvantaged Rural Communities, §15.958 relating to rules to administer the Colonia Self-Help Program, §15.977 relating to rules for loans from the Water Infrastructure Fund, §15.995 relating to rules necessary to administer loans from the Rural Water Assistance Fund, §16.342 relating to rules necessary to administer the economically distressed areas programs, §36.372 relating to rules necessary to administer the Groundwater District Loan Assistance Fund, and §6.190 authorizing the board to adopt rules necessary to carry out its powers and duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801950
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Effective date: May 4, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 463-8061

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND
SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.53

The Texas Water Development Board (board) adopts an amendment to §371.53, relating to criteria for listing financial guarantors acceptable to the board, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2261) and will not be republished. The amendment adds the word "stable" after the word "triple-A" to clarify that the board will consider placement on the list of authorized financial guarantors only those entities who have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The amendment was proposed because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

No comments were received regarding adoption of the amendment.

The amendment to §371.53 is authorized pursuant to Texas Water Code §15.605 that requires the board to adopt necessary rules to carry out Subchapter J relating to Financial Assistance for Water Pollution Control.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801951
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Effective date: May 4, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 463-8061

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 4. BOARD ACTION ON APPLICATIONS

31 TAC §375.53

The Texas Water Development Board (board) adopts an amendment to §375.53, relating to criteria for listing financial guarantors acceptable to the board, without changes to the proposed text as published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2262) and will not be republished. The amendment adds the word "stable" after the word "triple-A" to clarify that the board will consider placement on the list of authorized financial guarantors only those entities who have attained a triple-A stable rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.

The amendment was proposed because of recent market fluctuations related to investments by financial guarantors in certain collateralized debt obligations based on subprime mortgages. The board's purpose is to ensure the authorized list of financial guarantors for board loans have attained the highest rankings currently available by the rating agencies.

No comments were received regarding adoption of the amendment.

The amendment to §375.53 is authorized pursuant to Texas Water Code §15.601 which authorizes the creation of the state water

pollution control revolving fund and which authorizes the board to administer the fund through rules adopted by the board. This amendment is a rule necessary to administer the fund. Additionally, Texas Water Code §15.603(f) relating to the creation and administration of the revolving fund program authorizes the board to administer the fund in the manner provided by the rules of the board. Finally, Texas Water Code §15.605 requires the board to adopt necessary rules to carry out subchapter J relating to Financial Assistance for Water Pollution Control.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801952
Ingrid K. Hansen
Acting General Counsel
Texas Water Development Board
Effective date: May 4, 2008
Proposal publication date: March 14, 2008
For further information, please call: (512) 463-8061

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 271. CLASSIFICATION AND SEPARATION OF INMATES

37 TAC §271.1

The Texas Commission on Jail Standards adopts amendments to §271.1 concerning objective classification for inmates in transit without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7230).

This amendment is being adopted to allow a county to properly classify inmates in transit.

This rule provides requirements for the proper classification of inmates that are in transit.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801919
Brandon Wood
Assistant Director
Texas Commission on Jail Standards
Effective date: May 1, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-8236

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CHAPTER 273. HEALTH SERVICES

37 TAC §273.5

The Texas Commission on Jail Standards adopts amendments to §273.5 concerning Mental History Check without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7231).

This amendment is being adopted to standardize language utilized and clarify when the check is to be conducted.

This rule provides requirements for the verification of mental health services previously provided.

No comments were received regarding the proposal.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801920
Brandon Wood
Assistant Director
Texas Commission on Jail Standards
Effective date: May 1, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 463-8236

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.208, 19.214, and 19.2112, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 519).

The amendments are adopted to comply with some of the provisions of Senate Bill (SB) 1318, 80th Legislature, 2007, which amended the Texas Health and Safety Code, Chapter 242. Texas Health and Safety Code, §242.066, was amended to allow DADS to assess an administrative penalty against a person who fails to notify DADS of a change of ownership prior to the effective date of the change.

The amendments are also adopted to update terminology and state agency names and correct rule cross-references to ensure that the rule reflects changes resulting from the consolidation of health and human services agencies in 2004 and to update the sections to make them consistent with other DADS rules.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.208, §19.214

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801921
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 4, 2008
Proposal publication date: January 18, 2008
For further information, please call: (512) 438-3734

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SUBCHAPTER V. ENFORCEMENT DIVISION 2. LICENSING REMEDIES

40 TAC §19.2112

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2008.

TRD-200801922
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 4, 2008
Proposal publication date: January 18, 2008
For further information, please call: (512) 438-3734

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CHAPTER 94. NURSE AIDES

40 TAC §§94.2, 94.3, 94.9 - 94.11

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§94.2, 94.3, and 94.9 - 94.11 in Chapter 94, Nurse Aides, without changes to the proposed text published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 523).

The amendments are adopted to allow the Nurse Aide Registry to deem a nurse aide to be unemployable based on a finding that the nurse aide is listed as unemployable in the Employee Misconduct Registry.

DADS manages the Employee Misconduct Registry in accordance with Texas Health and Safety Code, Chapter 253, and the Nurse Aide Registry in accordance with federal law and regulations. The Employee Misconduct Registry is a state registry that maintains a record of unlicensed employees of facilities licensed by DADS and adult foster care providers who have engaged in misconduct. The Nurse Aide Registry is a federally mandated registry that maintains records regarding the status of individuals who have received nurse aide certification, including whether the person has committed abuse, neglect, or misappropriation. Facilities and agencies licensed by DADS, certain contracted providers, and state schools consult both registries for the purpose of determining employability of an applicant, but a person listed on the Employee Misconduct Registry is not necessarily designated as unemployable in the Nurse Aide Registry. The adopted amendments allow DADS to designate a nurse aide as unemployable in the Nurse Aide Registry if the nurse aide is listed as unemployable in the Employee Misconduct Registry.

DADS received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal

funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2008.

TRD-200801918

Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: May 1, 2008
Proposal publication date: January 18, 2008
For further information, please call: (512) 438-3734

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 1, concerning General Procedures, Subchapter A, concerning General Rules of Practice; Subchapter B, concerning Collection of Debts; Subchapter C, concerning Minority Purchasing; Subchapter D, concerning Miscellaneous Provisions; Subchapter E, concerning Advisory Committees, Subchapter G, concerning Interagency Agreements; Subchapter H, concerning Requests for Public Information; Subchapter J, concerning Agricultural Lien Disputes; Subchapter K, concerning Employee Training Rules; Subchapter L, concerning Urban Schools Grants Program; Subchapter M, concerning Surplus Agricultural Products Grant Program; Subchapter N, concerning Food and Fibers Research Grant Program Rules; and Subchapter O, concerning Home-Delivered Meal Grant Program, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Chapter 1, Subchapter A, §1.24 and §1.30; Subchapter B, §1.53; Subchapter C, §1.71 and §§1.73 - 1.78; Subchapter H, §§1.400, 1.402 and 1.404; Subchapter K, §1.700; Subchapter N., §1.923; new Subchapter K, §1.701, and the repeal of Subchapter D, §1.85; Subchapter E, §1.205; Subchapter G, §1.300; Subchapter H, §1.401 and §1.403; and Subchapter K, §1.701. These proposals may be found in the Proposed Rules section of this issue of the *Texas Register*.

The assessment of Title 4, Part 1, Chapter 1, Subchapters A - O, by the department at this time indicates that, with the exception of the proposed amendments to Subchapters A, B, C, H, K, and N, and proposed repeals in Subchapters D, E, G and H, the reason for readopting without changes all sections in these subchapters continues to exist.

The department is accepting comment on the review of Chapter 1, Subchapters A - O. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register* to Dolores Alvarado Hibbs, General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200801943
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 14, 2008

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The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapters 12, 19, and 22 pursuant to the Texas Government Code, §2001.039. Chapter 12 is titled Weights and Measures, Chapter 19 is Quarantines and Noxious Plants and Invasive Plants, and Chapter 22 is Nursery Products and Floral Items. Section 2001.039 requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes an amendment to Chapter 19, concerning Inspection Certificates, §19.2. The proposal may be found in the Proposed Rules section of this publication of the *Texas Register*.

The assessment by the department of Chapters 12, 19 and 22, indicates that with the exception of the proposed amendment to §19.2, the reason for readopting without changes all remaining sections in Chapters 12, 19 and 22, continues to exist.

The department is accepting comment on the review of Chapters 12, 19 and 22. Comments on the review must be submitted within 30 days following the publication of this notice in the *Texas Register*. Comments on Chapters 12, 19 and 22 may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200801944
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 14, 2008

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.252(jj)(2)

Radionuclides	Limit	Unsealed Sources			Sealed Sources
		10^3	10^4	10^5	10^{10}
Ce-142, Pr-141, Nd-144, Nd-145, Sm-146, Sm-147, Sm-148, Gd-148, Gd-150, Gd-151, Gd-152, Tb-159, Dy-154, Dy-156, Ho-165, Hf-174, W-180, Pt-190, Pb-210, Bi-209, Bi-209m, Po-208, Po-209, Po-210, Ra-226, Ac-227, Th-228, Th-229, Th-230, Pa-231, U-232, U-233, U-234, U-235, U-236, Np-235, Np-237, Pu-236, Pu-238, Pu-239, Pu-240, Pu-241, Pu-242, Pu-244, Am-241, Am-242m, Am-243, Cm-242, Cm-243, Cm-244, Cm-245, Cm-246, Cm-247, Cm-248, Bk-247, Bk-249, Cf-248, Cf-249, Cf-250, Cf-251, Cf-252, Es-254, Any Alpha-emitting radionuclide not listed above or mixtures of unknown alpha emitters of unknown composition	0.01 µCi	.01 mCi	0.1 mCi	1.0 mCi	100 Ci
Be-10, Al-26, Si-32, Ar-39, Ar-42, K-40, Ca-45, Ca-48, Ti-44, V-49, V-50, Fe-60, Zn-70, Ge-68, Ge-76, Kr-81, Sr-90, Zr-96, Mo-100, Tc-98, Rh-101, Rh-102, Pd-107, Ag-108m, Cd-113m, Cd-116, Sn-121m, Sn-123, Sn-124, Sn-126, Te-121m, Te-123, Te-130, I-129, La-137, La-138, Ce-139, Nd-150, Pm-143, Pm-144, Pm-145, Pm-146, Sm-145, Eu-150, Tb-157, Tb-158, Dy-159, Ho-166m, Lu-173, Lu-174, Lu-174m, Lu-175, Lu-176, Lu-177m, Hf-172, Hf-182, Ta-179, Re-184m, Re-187, Re-189, Os-194, Ir-199m2, Pt-192, Pt-198, Hg-194, Pb-202, Pb-205, Bi-208, Ra-228, Np-236, Bk-248, Any radionuclide other than alpha- emitting radionuclides not listed above or mixtures of beta emitters of unknown composition	0.1 µCi	0.1 mCi	1.0 mCi	10 mCi	1.0 kCi
Na-22, Co-60, Ru-106, Ag-110m, Cs-134, Ce-144, Eu-152, Eu-154, Bi-210	1.0 µCi	1.0 mCi	10 mCi	100 mCi	10 kCi
Cl-36, Ca-45, Mn-54, Ni-63, Zn-65, Se-75, Rb-87, Zr-93, Nb-93m, Cd-109, In-115, Sb-125, Ba-133, Ba-135, Cs-137, Gd-153, Eu-155, Tm-170, Tm-171, W-181, Tl-204	10 µCi	10 mCi	100 mCi	1.0 Ci	100 kCi
C-14, Fe-55, Co-57, Ni-59, Kr-85, Tc-97, Tc-99, Pt-193, Ir-194, Th (natural), Th-232, U(natural), U-238	100 µCi	100 mCi	1.0 Ci	10 Ci	1.0MCi
H-3	1.0 mCi	1 Ci	10 Ci	100 Ci	10 MCi

Figure: 25 TAC §289.252(jj)(7)

Radioactive Material*	Release Fraction	Quantity (curies)
Ac-228(89)	0.001	4,000
Am-241 (95)	0.001	2
Am-242 (95)	0.001	2
Am-243 (95)	0.001	2
Sb-124(51)	0.01	4,000
Sb-126(51)	0.01	6,000
Ba-133(56)	0.01	10,000
Ba-140(56)	0.01	30,000
Bi-207 (83)	0.01	5,000
Bi-210 (83)	0.01	600
Cd-109(48)	0.01	1,000
Cd-113 48)	0.01	80
Ca-45 (20)	0.01	20,000
Cf-252 (98)	0.001	9(20mg)
C-14 (6)**	0.01	50,000
Ce-141(58)	0.01	10,000
Ce-144(58)	0.01	300
Cs-134(55)	0.01	2,000
Cs-137(55)	0.01	2,000
Cl-36 (17)	0.5	100
Cr-51 (24)	0.01	300,000
Co-60 (27)	0.001	5,000
Cu-64 (29)	0.01	200,000
Cm-42(96)	0.001	60
Cm-43(96)	0.001	3
Cm-44(96)	0.001	4
Cm-45(96)	0.001	2
Eu-152(63)	0.01	500
Eu-154(63)	0.01	400
Eu-155(63)	0.01	3,000
Ge-68 (32)	0.01	2,000
Gd-153(64)	0.01	5,000
Au-198(79)	0.01	30,000
Hf-172(72)	0.01	400
Hf-181(72)	0.01	7,000
Ho-166(67)	0.01	100
H-3 (1)	0.5	20,000
In-14m(49)	0.01	1,000
Ir-192 (77)	0.001	40,000
Fe-55 (26)	0.01	40,000
Fe-59 (26)	0.01	7,000
Kr-85 (36)	1.0	6,000,000
Pb-210(82)	0.01	8
Mn-56 (25)	0.01	60,000
Hg-203 (80)	0.01	10,000
Mo-99 (42)	0.01	30,000
Np-237 (93)	0.001	2
Ni-63 (28)	0.01	20,000
Nb-94 (41)	0.01	300
P-32 (15)	0.5	100
P-33 (15)	0.5	1,000
Po-210(84)	0.01	10
K-42 (19)	0.01	9,000
Pm-45(61)	0.01	4,000
Pm-47(61)	0.01	4,000
Ru-106(44)	0.01	200
Sm-51(62)	0.01	4,000
Sc-46 (21)	0.01	3,000
Se-75 (34)	0.01	10,000
Ag110m(47)	0.01	1,000
Na-22 (11)	0.01	9,000
Na-24 (11)	0.01	10,000
Sr-89 (38)	0.01	3,000
Sr-90 (38)	0.01	90
Sr-35 (16)	0.5	900
Tc-99 (43)	0.01	10,000
Tc-99m (43)	0.01	400,000
Te-27m(52)	0.01	5,000
Te-29m(52)	0.01	5,000
Tb-160 (65)	0.01	4,000
Tm-170 (69)	0.01	4,000
Sn-113 (50)	0.01	10,000
Sn-123 (50)	0.01	3,000
Sn-126 (50)	0.01	1,000
Xe-133 (54)	1.0	900,000
Y-91 (39)	0.01	2,000
Zn-65 (30)	0.01	5,000
Zr-93 (40)	0.01	400
Zr-95 (40)	0.01	5,000
Any other ß-γ emitter	0.01	10,000
Mixed fission products	0.01	1,000
Mixed corrosion products	0.01	10,000
Contaminated equipment, ß-γ	0.001	10,000
Irradiated material any form other than solid non-combustible	0.01	1,000
Irradiated material, solid non-combustible	0.001	10,000
Mixed radioactive waste, ß-γ	0.01	1,000
Packaged waste, ß-γ***	0.001	10,000
Any other α emitter	0.001	2
Contaminated equipment α	0.0001	20
Packaged waste***	0.0001	20

Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)	Radioactive Material*	Release Fraction	Quantity (curies)
I-125 (53)	0.5	10	Ti-144 (22)	0.01	100			
I-131 (53)	0.5	10	V-48 (23)	0.01	7,000			

* For combinations of radionuclides, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radionuclide authorized to the quantity listed for that radionuclide in this paragraph exceeds one. ( ) indicates atomic number.

** Non CO forms only.

*** Waste packaged in Type B containers does not require an emergency plan.

Figure: 25 TAC §289.252(jj)(9)(D)

Radionuclide	Quantity of Concern[1] (TBq)	Quantity of Concern[2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material. When transporting or storing sources on vehicles and/or trailers, the sources are automatically considered co-located.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i* of radionuclide, *n*, A(*i*,*n*), to the quantity of concern for radionuclide *n*, Q(*n*), listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... >1

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Acceptance of Applications for the Wine Grape Investment Pilot Grant Program

The Wine Grape Investment Pilot Grant Program (Program) has been established by the Texas Department of Agriculture (TDA) to assist in expanding the number of acres of wine grape production in the state of Texas. This new Program is funded by the Wine Industry Development Fund, Texas Agriculture Code Section 50B.003, which allows for the use of funds to develop the wine industry and, thereby, the economic benefit of the wine industry to Texas. The information provided by Program grantees will also provide valuable insight about the costs of wine grape production and indicators of success in growing wine grapes. From May 1, 2008, through June 6, 2008, TDA will accept applications for the Grant Program from eligible Texas wine grape producers.

Eligibility Criteria.

To be eligible for the Wine Grape Investment Pilot Grant Program an applicant must meet the following criteria:

Applicants must be in the business of growing wine grapes or desire to begin growing wine grapes and must have developed a business plan for growing wine grapes.

The minimum new acreage required per grant will be no less than 5 acres.

Each award requires a minimum 2:1 investment match. The investment in new grape acres (as outlined in Section G of the Application) will need to be documented to support the requested grant amount.

Application.

Applications are available on the TDA website at: www.tda.state.tx.us or available upon request from TDA by calling (512) 463-9932.

Applicants must use TDA's prescribed form (RED-200). Completed applications should be submitted to: Texas Department of Agriculture, Rural Economic Development Division, Wine Grape Investment Pilot Grant Program, P.O. Box 12847, Austin, TX 78711.

All applications must be received by TDA no later than June 6, 2008 to be considered.

Applications must be fully complete.

TDA staff will review the applications for eligibility and completeness. Applicants may be allowed to correct deficiencies.

Acreage and Business Plan for Grant Proposal information as outlined below must be approved and verified at the time the application is submitted. Approval and verification of the Acreage and Business Plan for Grant Proposal may be provided by either a Texas Agri-Life Extension Service Regional Viticulture Representative or other viticulture professional. A list of individuals who can provide the required approval and verification may be obtained by contacting Mr. Allen Regehr, Program Administrator, at allen.regehr@tda.state.tx.us or (512) 463-9932. (The Texas AgriLife Extension Service will not be involved with decisions on who will receive grants). The business plan form must include: (1) where the new acreage is to be planted; (2) when the new acreage is to be planted; (3) variety to be planted; (4) costs associated with grape planting; and, (5) marketing plans. The Business Plan for Grant Proposal form is available at the Economic Development link to the TDA web site at www.tda.state.tx.us under Wine Grape Investment Pilot Grant Program information.

Use of Funds/Reimbursement and Reporting.

The maximum grant amount that may be awarded per applicant is $25,000. Total funding available for all Program grants is limited to $250,000.

Permissible uses of grant funds include, but are not limited to, trellis systems, dirt work, root stock, irrigation installation, fertilizer and other expenses to plant wine grapes. Capital expenditures (land or any items over $5,000) are not reimbursable.

Applicants will be required to provide acceptable verification of the required investment prior to disbursement of grant monies. For example, if a $25,000 grant amount is applied for, grant recipient must provide documentation of expenditures of $75,000 prior to disbursement of the $25,000 grant amount. Any existing collateral will not be considered towards the required match i.e. existing wine-grape acreage and/or existing equipment will not be allowed in the match calculation.

Grant funds will be paid on a reimbursement basis. Receipts, invoices and/or other information such as a lender statement to certify eligible expenditures must be furnished.

Grant recipients will be notified on or before Ju1y 1, 2008 provided all verification and documentation is complete.

The Wine Grape Investment Pilot Grant Program grantees will enter into a grant agreement with TDA. The grant agreement must be signed and returned to TDA prior to the release of grant funds for a grantee's allowable expenditures.

Compliance with reporting requirements is necessary if you accept a grant. Each grant recipient will be required to submit a Reporting Requirements form with signed certification indicating the number of acres planted for year one (2009). In years two through five (2010-2013), grant recipient will be required to complete the Reporting Requirements form (attached to the application and to the grant agreement). These reports are due to TDA on or before November 1, annually.

Selection of Grantees.

Grant recipients will be selected from completed applications received by TDA.

Applications will be evaluated based upon information provided in the application and any required attachments.

Grant awards and amounts will be determined at the discretion of TDA and based on the scoring criteria published with this notice, and may be subject to limitations in funding.

An independent review panel will evaluate and score each Business Plan for Grant Proposal submitted.

General Compliance Information.

All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Awarded grant projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Upon grant award, TDA and the Texas State Auditor's Office shall have access to and the right to examine all books, accounts, records, files and other papers or property belonging to or in use by the grantee and pertaining to the grant award. Additionally, these records must remain available and accessible no less than three (3) years after the termination of the grant project.

In accordance with Texas Government Code Ann., §783.007, grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). Upon grant award, grantees can be provided a copy or it may be downloaded from http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc.

Effective September 1, 2007, Texas Government Code §2264.001 et seq. requires a business who receives an economic development grant to certify at the time of application that such business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving an economic development grant, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. 1324a(f), the business shall repay the amount of the grant with interest, at the rate and according to the other terms provided by an agreement under §2264.053 of the Texas Government Code, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

Texas Public Information Act.

All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

Further Information.

Additional information about the Wine Grape Investment Pilot Grant Program and application process can be found on TDA's website. In addition, applicants may contact Allen Regehr, Program Administrator, at (512) 463-9932 or allen.regehr@tda.state.tx.us, for more information.

TRD-200802000
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: April 16, 2008

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 4, 2008, through April 10, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 16, 2008. The public comment period for this project will close at 5:00 p.m. on May 16, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: South Texas Bayfront Properties; Location: The project is located along Carancahua Bay, at 22007 Highway 172, in the City of Port Lavaca, Jackson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Olivia, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 750211; Northing: 3179320. Project Description: The applicant proposes to construct 47 piers, one each on 47 lots, and dredge 13 cubic yards for a 30-foot-long by 14-foot-wide boat ramp in the Sunrise Bay Subdivision. Each pier will be 200-foot-long by 4-foot-wide with a 10-foot-long by 30-foot-wide L-head. The dredge material will be placed on an upland site within the project area. CCC Project No.: 08-0117-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00075 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200801976
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 15, 2008

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403, §§403.011, 403.105, 403.1041, and 403.1069; and Chapter 404, Subchapter G, §§404.103, 404.104, and 404.104(c); and Chapter 2254, Subchapter A, and Chapter 2256, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company), announces issuance of its Request for Proposals (RFP #184b) from qualified, independent firms or individuals to provide professional certified public accountant services for the Trust Company for the purpose of providing financial audits and compliance attestation services (the "Audits") with respect to the (i) Trust Company, (ii) Tobacco Settlement Permanent Trust Account (the "Tobacco Fund"), and (iii) TexPool and TexPool Prime, which are local government investment pools managed by the Texas Comptroller of Public Accounts by and through the Trust Company. The selected contractor or contractors (Contractor) will provide the requested services to the

Trust Company to complete one or more Audits. The Trust Company reserves the right to award one or more contracts under this RFP. If approved by the Trust Company, the Contractor will be expected to begin performance of the contract, if any, on or about June 1, 2008.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, April 25, 2008, after 10:00 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily after 10:00 a.m. Friday, April 25, 2008. The Electronic State Business Daily (ESBD) website address is http://esbd.cpa.state.tx.us.

Questions: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, May 5, 2008. Prospective proposers are encouraged to fax Questions to (512) 463-3669 to ensure timely receipt. The Questions must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an official of that entity. On or before Friday, May 9, 2008, the Comptroller expects to post responses to questions as a revision to the ESBD notice of the RFP. Questions received after the deadline will not be considered; respondents shall be solely responsible for ensuring timely receipt of all Questions by the Issuing Office.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, May 16, 2008. Proposals received in the Issuing Office after this time and date will not be considered. Respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller and Chief Executive Officer of the Trust Company will make the final decision on award(s). The Trust Company reserves the right to accept or reject any or all proposals submitted. The Trust Company is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Neither the Comptroller, nor the Trust Company shall pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - April 25, 2008, after 10:00 a.m. CZT; Questions Due - May 5, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - May 9, 2008; Proposals Due - May 16, 2008, 2:00 p.m. CZT; Contract Execution - June 1, 2008, or as soon thereafter as practical; Commencement of Work - June 1, 2008. Revisions to this schedule, if any, will be posted as revisions to the notice of issuance of this RFP.

TRD-200801988
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 16, 2008

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Request for Qualifications

A. Pursuant to Senate Bill 1458, 77th Texas Legislature codified in Subchapter A, Chapter 111, §111.0045, Texas Tax Code, the Comptroller of Public Accounts (the Comptroller) issues this Request for Qualifications (RFQ #183b) from qualified independent persons or firms to perform certain services. As a clarification, as used in this RFQ #183b and the Comptroller's rules codified at 34 TAC §3.3, the services under any contracts resulting from this RFQ mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

B. The Comptroller issued this RFQ #183b by posting it on the Electronic State Business Daily on April 25, 2008, and, by publishing this RFQ #183b in this issue of the *Texas Register*. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform examinations that meet the requirements of §111.0045, Texas Tax Code, administrative rules adopted and procedures established by the Comptroller under that statute, and other applicable law. The Comptroller has adopted a rule governing contract examiners as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

C. The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract examiners as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract examiners selected under previous RFQs must attend Mandatory Orientation conducted by the Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ. However, respondents that are existing contractors and have received an official notice of intent to renew contract through August 31, 2009 do not need to submit a response to this RFQ. The contract term under this RFQ shall be for one year ending August 31, 2009 with two (2) renewal options of one (1) year each exercised one (1) year at a time.

D. By this contract examination program, the Comptroller intends to increase the number of examinations of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with §111.0045, Texas Tax Code, the Comptroller's administrative rules and procedures and other applicable law.

E. The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

(i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three hours of auditing; and

(ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

F. For state fiscal year 2009 beginning September 1, 2008, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of not to exceed $180,000 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner

employees shall be considered, in the Comptroller's sole discretion, for one (1) initial $33,000 award and an additional award contingent upon satisfactory performance during the designated milestone periods. Firms in the form of any business entity that may lawfully perform examinations and which have two (2) or more examiners may be considered, in the Comptroller's sole discretion, not to exceed $180,000 per fiscal year during the Contract term, for multiple initial awards per firm of $33,000 for each qualifying examiner and additional awards contingent upon satisfactory performance during the designated milestone periods, Barring unforeseen circumstances only one (1) round of initial awards will be made at the beginning of the one (1) year initial contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year initial contract term. The Comptroller reserves the right, in its sole discretion, to reallocate, after their initial assignment, examination packages among contract examiners based on the Contractor's substantial performance or non-performance under the Contract terms so as to increase or decrease the number of examinations assigned to a particular contract examiner. Payment will be made in accordance with the terms of the Contract. Each Contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 640 person hours of work for each $30,000 amount to complete at the rate of $46.88 per hour. The estimated hours will be calculated based on the average number of hours required in the past to complete the examinations of each type of business during a period to be determined at the sole discretion of the Comptroller, notwithstanding the fact that a previous examination of a specific taxpayer or business may have required more or less hours than the average. Examiners will be paid for assigned work completed to date in $10,000 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by the Comptroller as provided in the Agreement.

G. In performing assigned examinations and for the contracted lump sum payments, selected contract examiners will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

H. Under this RFQ, the maximum contract amount paid to any individual examiner without additional examiner employees, an individual examiner with additional examiner employees or a firm with multiple examiners will not exceed $180,000.00 for the FY 2009.

I. Selected contract examiners must complete all work and submit all examination reports, workpapers and other deliverables no later than required under the terms of the proposed Agreement.

J. Selected contract examiners must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned examination.

K. Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ:

L. Section 2252.901, Texas Government Code reads as follows: "(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the Agreement. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

It is the Comptroller's policy that an individual employed by the Comptroller during the last twelve (12) months may not provide services under the Contract as individual or employee of Contractor or another Contractor and may not receive any compensation under the Contract. The twelve (12) month period is measured from the date of separation from Comptroller employment until the date responses to this RFQ are due as stated on Page 4 of the RFQ as posted in the Electronic State Business Daily.

Section 572.054, Texas Government Code, reads in pertinent part as follows: "(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. (c) Subsection (b) applies only to: (1) a state officer of a regulatory agency; or (2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

Section 572.054(b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded $33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

M. Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than September 2, 2008 upon completion of orientation or other timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple Agreements as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample Agreement. Any resulting Agreements are non-exclusive and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any examinations to recipients of contract awards.

N. Questions; Proposed Contract: Questions concerning this RFQ must be in writing and submitted via hand delivery, facsimile, or E-mail no later than May 9, 2008, 2:00 p.m., Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, facsimile (512) 463-3669 or E-mail at contracts@cpa.state.tx.us. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the Electronic State Business Daily notice as soon as possible after receipt; the Comptroller expects to post

these official responses no later than May 16, 2008 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions of the RFQ, revising or amending the RFQ and/or other documents attached to the RFQ. For these reasons, respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statements of Qualification. A copy of the sample contract, the standard form Respondent Questionnaire described below, mandatory Execution of Statement of Qualifications Form, Required Checklist for Statements of Qualification, and other required documents are all attached to this RFQ for reference and use by respondents.

O. Closing Date: An original with original ink signatures on each document within the Statement of Qualifications requiring signatures and ten (10) hard copies of each Statement of Qualifications clearly marked as copies must be overnighted or hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on June 2, 2008. Statements of Qualification received after this time and date will not be considered. No Statements of Qualification will be accepted in any other format or media other than hard copy. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

P. Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit F to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

2. Transmittal letter that (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations; and (b) outlines the respondent's understanding of §111.0045, Texas Tax Code, other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as needed basis;

3. Respondent Identifying Information.

The respondent must provide the following identifying information:

a. name and address of the individual or business entity submitting the proposal;

b. names of all principals;

c. type of business entity (i.e. sole proprietorship, corporation, partnership, limited liability company, etc);

d. state of incorporation or organization and principal place of business (attach copies of articles or other certificates showing official approval by the pertinent governmental entity);

e. name and location of each local examination facility that relates to the respondent's performance under this RFQ;

f. name, address, business and home telephone number, fax number, cell phone number, and e-mail address of the respondent's principal contact person regarding the Contract;

g. the respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number, if any;

h. full name and address, telephone number, fax number, cell phone number and e-mail address for each shareholder, member, partner, and employee of the respondent who will perform services on the Contract;

i. detail any firm ownership changes which have occurred in the last three years. Are any changes pending?

j. detail any joint ventures or affiliations.

4. Respondent Questionnaire Exhibit A to the RFQ for each individual who will be involved in the project. The Respondent Questionnaire must be on the form contained on the addenda to the Electronic State Business Daily notice of issuance of this RFQ. The response to the RFQ must disclose all personnel who will perform professional services under the terms of the Agreement. Respondent understands only those persons disclosed by the Respondent Questionnaire will be admitted to the required orientation classes. This provision will be strictly enforced. All information on the Respondent Questionnaire form must be fully filled out and complete in all respects. Evaluation of respondents will be based in part on the information on this form and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Respondent Questionnaire detailing all courses, dates, and subject of courses by each person who applies to perform examination services may result in disqualification of the Statement of Qualifications;

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as needed basis if selected by the Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one year experience requirement in 34 TAC §3.3 to properly perform a sales and use tax examination with minimal supervision. If portions of any Comptroller publication, manual, or other document are used to prepare the examination plan or incorporated into the plan, the most current version must be used. The Comptroller's audit manuals may be found at the following internet location:

http://www.window.state.tx.us/taxinfo/audit/auditman.htm. Also see the Comptroller's Auditing Fundamentals Manual, Chapter 3 and 4 at http://www.window.state.tx.us/taxinfo/audit/auditfun/3aplan.htm and http://www.window.state.tx.us/taxinfo/audit/auditfun/4entranc.htm, respectively. Chapter 3 and 4 of the Sales Tax Policy/Procedure Manual are at http://www.window.state.tx.us/taxinfo/audit/salestax/3a.htm and http://www.window.state.tx.us/taxinfo/audit/salestax/4a.htm, respectively;

6. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including (a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; (c) date availability for each of the personnel to perform assigned examinations; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment, and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Audit Fundamentals Manual;

7. Statement of whether or not the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations. In order to be a Historically Underutilized Business, a respondent must be registered as such with the

Comptroller's Texas Purchasing and Support Services Division to its rules and regulations concerning the same. You may check the website at http://www.window.state.tx.us/procurement/prog/hub/hub-certification/ or call the Comptroller's HUB Coordinator, Hilda Galaviz at (512) 463-3911;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned examinations;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample Agreement, including, without limitation, the proposed fee arrangements, as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

10. Completed, initialed where applicable, and signed Execution of Statement of Qualifications Form on Exhibit B as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

11. Completed and signed Nondisclosure Agreement on the form set out on Exhibit D to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

12. Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages set out in Section VIII of the Agreement for Professional Services and stating that the coverages are available to the respondent upon selection, if any, of the contract examiner pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Failure to provide information on EACH of the required coverages may result in disqualification of the Respondent's Statement of Qualifications. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the respondent's selection. Time is of the essence and no Agreements will be executed without the coverage required. A successful respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller;

13. Completed, signed, and initialed where applicable Criminal History Certification on the form set out on Exhibit E to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

14. Signed Statement of representation that the respondent and any persons holding equity interests in respondent and all persons listed as examiners in its Statement of Qualifications are neither respondents under any other Statement of Qualifications responding to this RFQ, nor are employed by, contracted with, and do not own any equity or debt interest in any other respondent to this RFQ; and

15. Compliance with any amendments, modifications, or other requirements and changes to the RFQ set out in the Official Response to Questions in connection with this RFQ and posted by the Comptroller on the Electronic State Business Daily prior to the Closing Date for this RFQ. The above 15 items shall be submitted in the respondent's Statement of Qualification as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 15 items above may result in disqualification of the respondent but the Comptroller reserves the right to waive minor variations in responses in the best interests of the Comptroller and of the State of Texas.

Q. Mandatory Orientation Session: All respondents must attend, at their sole cost and expense, mandatory orientation session to be conducted by the Comptroller in Austin on July 29, 2008 through July 31, 2008 or as soon thereafter as possible. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ.

R. Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on the evaluation criteria set out on Exhibit H to this RFQ as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code in its sole discretion in the best interests of the Comptroller and the State of Texas. Successful Respondents will be notified by e-mail of their preliminary selection prior to the Mandatory Orientation Session. Notice of contract awards will be published in the Electronic State Business Daily and the *Texas Register* as soon as possible after all Agreements , if any, resulting from this Statement of Qualifications, are fully executed. Respondents who do not receive a preliminary selection e-mail notice before the Orientation Session should assume that they were not selected although the official notice of award will be not be published at the time of the Mandatory Orientation Session but will be posted at the time stated in the Summary of Schedule in the last paragraph of this RFQ or as soon as practical thereafter. The Electronic State Business Daily may be accessed online at: http://esbd.tbpc.state.tx.us/.

S. Protests. Protests regarding this RFQ or actions taken under it shall be governed by the Comptroller's rule located at 34 TAC §1.72, Protests of Agency Purchases.

T. Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a respondent and approve of contract examiners on an individual basis based on the evaluation criteria. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

U. Under House Bill 3430, 80th Texas Legislature, (transferring §2177.052, Texas Government Code, to Chapter 322 Texas Government Code and redesignating it as §322.020), and as per the following requirements, upon written request by the Comptroller prior to contract signature, the Successful Respondents must provide to the Comptroller with electronic copies of its complete Statement of Qualifications. Successful Respondents shall deliver to the Comptroller a total of four (4) CDs with the following material prior to its signature on the contract, if any, resulting from this RFQ:

* Two CDs, each containing a complete copy of the Successful Respondent's Statement of Qualifications in PDF format. A complete copy of the Proposal includes all documents contained in the Statement of Qualifications submitted in response to this RFQ including those documents with the Successful Respondent's signature. These two identical CDs should be titled: "Complete copy of [Name of the Successful Respondent]'s Statement of Qualifications responding to Comptroller's RFQ #183b."

* Two CDs, each containing a copy of the Successful Respondent's Statement of Qualifications which the Successful Respondent has ex-

cised, blacked out, or otherwise redacted information from its Statement of Qualifications that the Successful Respondent considers to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code (this should be a de minims portion, if any, of the Successful Respondent's Statement of Qualifications, such as social security numbers or e-mail addresses). Each CD shall also contain an Appendix for the Successful Respondent's Statement of Qualifications which provides a cross reference for the location of each piece of material redacted by the Successful Respondent and a general description of the redacted information. These two identical CDs should be titled "For Public Release: Redacted Version of [Name of the Successful Respondent]'s Statement of Qualifications and Appendix responding to Comptroller's RFQ #183b."

V. Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ by publication in the April 25, 2008 issue of the *Texas Register* and issuance of RFQ, including sample contract, on Electronic State Business Daily - April 25, 2008, 10:00 a.m. CZT; Questions Due - May 9 , 2008, 2:00 p.m. CZT; Posting of Official Responses to Questions - May 16, 2008, 5:00 p.m. CZT or as soon thereafter as practical; Statements of Qualification Due - Monday, June 2, 2008, 2:00 p.m. CZT; Mandatory Orientation - July 29, 2008 through July 31, 2008; Contract Execution - August 15, 2008, or as soon thereafter as practical; Notice of Contract Awards posted on Electronic State Business Daily and *Texas Register* - August 15, 2008 or as soon thereafter as practical; and Beginning of Examinations - September 2, 2008 upon completion of Orientation and Contract signature, or as soon thereafter as practical.

TRD-200801981
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: April 15, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/21/08 - 04/27/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/21/08 - 04/27/08 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200801966
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 15, 2008

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Credit Union Department

Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from America's Credit Union (Garland) seeking approval to merge with Garland Federal Credit Union (Garland). America's Credit Union will be the surviving credit union. In accordance with Texas Finance Code §122.005(b) and 7 TAC §91.104(b), the Commissioner has the authority to waive or delay public notice of an action.

An application was received from Smart Financial Credit Union (Houston) seeking approval to merge with Key Federal Credit Union (Houston). Smart Financial Credit Union will be the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801987
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 16, 2008

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from United Credit Union, Tyler, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Smith County, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas (#1) to expand its field of membership. The proposal would permit employees of Frontier Drilling who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas (#2) to expand its field of membership. The proposal would permit employees of House of Forgings, Inc. who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from First United Credit Union, Tyler, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, attend school and businesses located within a ten (10) mile radius of First United Credit Union's office located at 3304 S. Broadway, Suite 102, Tyler, Texas 75701, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801986

Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 16, 2008

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Deep East Texas Council of Governments

Request for Quotations for Uninterrupted Power Supply System

I. Overview

The Deep East Texas Council of Governments (DETCOG) is now accepting quotes for Uninterrupted Power Supply's (UPS) for the region's Public Safety Answering Points (PSAPs). Quotation documents may be picked up at the DETCOG office at 210 Premier Dr., Jasper, Texas 75951 through May 12, 2008 at 5:00 p.m.

II. Obtaining Full Request for Quotations (RFQ) and Submission Information

The Full RFQ can be obtained at http://detcog.org or by contacting:

Bobbie Stott, Purchasing Officer

Phone: (409) 384-5704 x 245

Fax: (409) 384-5390

E-mail: bstott@detcog.org

TRD-200801980
Walter G. Diggles, Sr.
Executive Director
Deep East Texas Council of Governments
Filed: April 15, 2008

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Texas Education Agency

Request for Applications Concerning the Even Start Family Literacy Competitive Grant, 2008-2009

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-109 for the implementation of Even Start Family Literacy Programs from eligible partnerships composed of (1) a public school district or open-enrollment charter school; and (2) one or more of the following entities: (a) a nonprofit community-based organization, (b) a public agency, (c) an institution of higher education, or (d) a public or private nonprofit organization of demonstrated quality other than a local educational agency. An education service center (ESC) may apply only as fiscal agent of an eligible partnership.

Description. The purpose of the Even Start Family Literacy Program is to help parents become full partners in their children's education; help children reach their full potential as learners; provide literacy training for parents; assist families with parenting strategies in child growth and development and the educational process for children ages birth through 7 years; and coordinate efforts that build on existing community resources. The goal is to help break the cycle of poverty and illiteracy by improving educational opportunities of low-income families by integrating early childhood education, parenting education, and adult education into a unified family-centered program.

Applicants must identify and recruit families most in need of services provided under Even Start, as indicated by a low level of income, a low level of adult literacy, or a low level of English language proficiency of the eligible parent or parents. Applicants must provide high-quality, intensive instructional programs that promote adult literacy, empower parents to support the educational growth of their children, provide developmentally appropriate early childhood educational services, and prepare children for success in regular school programs.

Dates of Project. The Even Start Family Literacy Grant will be implemented during the 2008-2009 school year. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than August 31, 2009.

Project Amount. Funding will be provided for approximately 12 projects. Each project will receive a maximum of $200,000 for the 2008-2009 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities, on general budget approval by the commissioner of education, and on appropriations by the U.S. Congress. This project is funded 90 percent from federal funds and 10 percent from local cost share match, which may be provided from other federal, state, or local sources.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Special consideration (or priority) will be given to applicants that propose to serve a population that contains at least 75 percent economically disadvantaged students and that meets at least one of the three criteria of illiteracy, unemployment, or limited English proficiency as specified in the RFA. In addition, priority points will be awarded to programs located in an Empowerment Zone or Enterprise Community. Additionally, programs that have operated an Even Start grant in the past three years will be awarded priority points based on meeting or exceeding specific state targets or performance measures as listed in Part 2: Program Guidelines of the RFA. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Applicant's Conference. An applicant's conference will be held on May 12, 2008, from 9:00 a.m. until 12:00 p.m. via the Texas Educational Telecommunication Network (TETN) available at each regional ESC (TETN Event #30915). To locate the nearest TETN facility, applicants should contact the TETN site manager at their regional ESC. A complete list of ESCs, including contact information, is available on the TEA website at http://www.tea.state.tx.us/ESC/. Questions relevant to the RFA may be sent to Elizabeth Thompson at ethompson@hcde-texas.org or faxed to (713) 636-0797 prior to May 8, 2008. These questions, along with other information, will be addressed in the

presentation. The conference will be open to all potential applicants and will provide general and clarifying information about the program and RFA.

The entire applicant's conference will be digitally recorded and streamed over the Internet. Prospective applicants who are not able to attend the applicant's conference may request a password and procedures to download the video stream from the TETN site manager at their local ESC.

Further Information. For clarifying information about the RFA, contact Elizabeth Thompson, Texas LEARNS, Harris County Department of Education, (713) 696-0700. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, July 8, 2008, to be eligible to be considered for funding.

TRD-200801989
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: April 16, 2008

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Commission on State Emergency Communications

Request for Comments

Regarding Rulemaking Proceeding to Repeal and Replace §251.10, Relating to Revised Guidelines for Implementing E9-1-1 Service

The staff of the Commission on State Emergency Communications (CSEC) requests that interested persons file comments on the repeal and replacement of §251.10, relating to Revised Guidelines for Implementing E9-1-1 Service Location. The strawman rule can be viewed in the "What's New" section of CSEC's website: http://www.911.state.tx.us.

At a future Open Meeting, CSEC staff intends to recommend that existing §251.10 be repealed and replaced with a new §251.10. The repeal and replacement approach is being utilized by CSEC staff due to the considerable number of changes to the existing rule. Prior to proposing a new §251.10, CSEC staff seeks comments on the strawman replacement rule.

Comments on the strawman may be submitted in writing within 30 days after publication of this notice in the *Texas Register* to: Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or via facsimile to Patrick Tyler at (512) 305-6937. Comments should reference §251.10 in the title or subject line (including the facsimile cover sheet).

Questions concerning this notice should be referred to Darlene Hill, Contract Specialist, at 1-800-562-0911 or (512) 305-6922; or via e-mail to darlene.hill@csec.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact CSEC at (512) 305-6925.

TRD-200801999
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: April 16, 2008

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Request for Comments to Questions

Regarding Revisions to §251.2, Relating to Guidelines for Changing or Extending 9-1-1 Service Arrangements, and §251.7, Relating to Guidelines for Implementing Integrated Services

As part of its required rule review of §251.2 and 251.7, the staff of the Commission on State Emergency Communications (CSEC) has determined that substantive changes need to be proposed to the existing rules. In order to develop such proposals, CSEC requests that interested persons file comments to the following questions:

Regional Internet Protocol (IP) Network to Interconnect Public Safety Answering Points (PSAPs)

I. In the planning and design of a high-availability regional IP Network to interconnect PSAPs:

1. What level of fault tolerance should be achieved?

2. What are the exceptional conditions that the regional IP Network should be capable of handling?

3. What are the mission critical components and how are they determined?

4. To what extent must the following be applied to the regional IP Network design to ensure continuity of operations:

a. Redundancy;

b. Replication; and

c. Diversity of trunking/transport path?

5. What criteria should be used to determine the following:

a. Host/remote ratio;

b. Bandwidth;

c. Committed bit rate;

d. Quality of Service (QoS); and

e. Minimum and maximum number of days/hours, the regional IP Network and/or PSAP be expected to function on a diminished capacity?

6. Do the following contribute to the fault tolerance and/or continuity of operations of the regional IP Network and, if so, in what way and to what extent:

a. Status monitoring of network elements;

b. Status monitoring of Customer Premises Equipment; and

c. Remote diagnostics?

7. What are current and potential security threats to the regional IP Network and the interconnected PSAPs that must be addressed?

8. In order to reduce the risk of security breaches, improve detection and response capabilities, facilitate advanced change management practices, and increase the ease of access for authorized users, what do you recommend, at a minimum, for the following:

a. Security policies and procedures;

b. Perimeter security measures;

c. Authentication and authorization systems;

d. Access control devices;

e. Public key infrastructure (PKI), if appropriate/applicable; and

f. Standalone call-taking capabilities to be integrated, such as supplemental location information, call recording and playback, Texas Law Enforcement Teletype Services (TLETS), Computer Aided Dispatch Gateway, and Information Management Systems?

9. What are the minimum requirements for the following:

a. Facilities housing network components and equipment; and

b. Security of the facilities housing the network components and equipment?

II. In the implementation of a regional IP Network to interconnect PSAPs, what level of acceptance testing and verification is minimally required to establish the following:

1. The desired fault tolerance has been achieved;

2. Interconnectivity between PSAPs;

3. Integration of standalone call-taking capabilities; and

4. The effectiveness of the security measures in place?

III. In the ongoing maintenance of a regional IP Network to interconnect PSAPs, how often should:

1. QoS be re-tested/evaluated; and

2. Controlled penetration tests be conducted?

3. Should remedial measures that require a network design change be contractually warranted?

IV. What other factors and issues must be considered for the planning, design, implementation and maintenance of a regional IP Network to interconnect PSAPs?

Based on the comments received, CSEC staff intends to propose amendments to §251.2 and §251.7 at a future Open Meeting.

Comments may be submitted in writing within 30 days after publication of this notice in the *Texas Register* to: Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or via facsimile to Patrick Tyler at (512) 305-6937. Comments should reference §251.2 and §251.7 in the title or subject line (including the facsimile cover sheet).

Questions concerning this notice or the questions should be referred to Susan Seet, Chief Program Technical Officer, at 1-800-562-0911 or (512) 305-6917; or via e-mail to susan.seet@csec.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact CSEC at (512) 305-6925.

TRD-200802002
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: April 16, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 26, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 26, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Boyd; DOCKET NUMBER: 2007-1945-PWS-E; IDENTIFIER: RN101387496; LOCATION: Boyd, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.41(c)(1)(C) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.c.iii., by failing to locate/construct all wells at a distance greater than 500 feet from the animal feed lots; 30 TAC §290.41(c)(1)(F) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.c.i., by failing to secure a sanitary control easement; 30 TAC §290.43(c)(8) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.a.iii., by failing to maintain the system's 30,000 gallon elevated storage tank; 30 TAC §290.44(d) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.b.vi., by failing to maintain and operate the water system to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system; 30 TAC §290.42(l) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.b.iii, by failing to keep a thorough plant operations manual for operator review and reference; and 30 TAC §290.121(a) and Agreed Order Docket Number 2005-0507-PWS-E, Ordering Provision 2.b.i., by failing to complete and maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: $2,580; Supplemental Environmental Project (SEP) offset amount of $2,580 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Water or Wastewater Treatment; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Buckholts; DOCKET NUMBER: 2007-1569-PWS-E; IDENTIFIER: RN101234573; LOCATION: Buckholts, Milam County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of

the distribution system at a minimum of 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L combined chlorine; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 psi throughout the distribution system; and 30 TAC §290.42(e)(3), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; PENALTY: $1,114; Supplemental Environmental Project (SEP) offset amount of $892 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Corinne Maib dba Coleto Water; DOCKET NUMBER: 2007-0935-PWS-E; IDENTIFIER: RN102683562; LOCATION: Victoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to provide the public water system's operating records for review during inspections; 30 TAC §290.110(d)(3), by failing to monitor free chlorine residual to a minimum accuracy of plus or minus 0.1 mg/L using an approved method; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement; 30 TAC §290.43(c)(3), by failing to provide the ground storage tank with an overflow pipe flap valve assembly with a gap of no more than 1/16-inch; 30 TAC §290.41(c)(3)(N), by failing to provide a functional flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(n)(2), by failing to maintain an accurate and up-to-date map of the distribution system; 30 TAC §290.46(j), by failing to issue customer service inspection certificates; 30 TAC §290.110(b)(2), by failing to maintain a minimum disinfectant residual of 0.2 mg/L free chlorine throughout the distribution system; and 30 TAC §290.44(d) and §290.46(r), by failing to maintain a minimum pressure of 35 psi within the distribution system; PENALTY: $2,365; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: DuPont Performance Elastomers L.L.C.; DOCKET NUMBER: 2007-1901-AIR-E; IDENTIFIER: RN100219239; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), New Source Review (NSR) Permit 556A, Special Condition (SC) 1, Federal Operating Permit O-01269, General Terms and Conditions, and SC 8, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent an unauthorized emissions event; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: First Texas Homes, Inc.; DOCKET NUMBER: 2008-0458-WQ-E; IDENTIFIER: RN105447551; LOCATION: Celina, Collin County, Texas; TYPE OF FACILITY: housing community; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Fort Worth; DOCKET NUMBER: 2008-0149-WQ-E; IDENTIFIER: RN100942259; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: collection line; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010494013, Permit Conditions 2.g., and the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from the collection system; PENALTY: $21,600; Supplemental Environmental Project (SEP) offset amount of $21,600 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Matt Ray and Donnie Johnson; DOCKET NUMBER: 2007-1973-PST-E; IDENTIFIER: RN101733210; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: property with three inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Neal's Lodges, Inc.; DOCKET NUMBER: 2007-1905-MLM-E; IDENTIFIER: RN101882397; LOCATION: Concan, Uvalde County, Texas; TYPE OF FACILITY: resort; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain authorization for the installation of an aboveground storage tank (AST); 30 TAC §334.75 and §334.129, by failing to cleanup spills/overfills from a diesel fuel tank; 30 TAC §334.126(a)(1)(A), by failing to provide notification to the TCEQ at least 30 days prior to relocating the 2,000 gallon AST; and 30 TAC §334.127(a)(1)(A), by failing to provide registration for the ASTs; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Peachleaf Associates Venture #1, L.P.; DOCKET NUMBER: 2007-1863-PWS-E; IDENTIFIER: RN101183499; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect monthly water samples for bacteriological analysis and by failing to provide public notification of the failure to conduct monthly bacteriological sampling; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Post Oak Special Utility District; DOCKET NUMBER: 2007-1851-PWS-E; IDENTIFIER: RN101452209; LOCATION: Dawson, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(D)(i) and §290.46(f)(3)(E)(iv), by failing to keep on file and make available for commission review the following water system records: bacteriological sampling records and customer service inspection reports; 30 TAC §290.43(c)(2), by failing to secure the roof hatch of a ground storage tank; 30 TAC §290.46(j), by failing to complete customer service inspection reports prior to providing continuous water service to new construction; and 30 TAC §290.43(e), by failing to provide a properly constructed intruder resistant fence; PENALTY: $668; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: City of Pottsboro; DOCKET NUMBER: 2007-1594-MWD-E; IDENTIFIER: RN101920072; LOCATION: Grayson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number WQ0010591001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment and control are properly operated and maintained; 30 TAC §305.125(4), TPDES Permit Number WQ0010591001, Permit Conditions Number 2.d., Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 4, and the Code, §26.121(a), by failing to prevent the discharge and accumulation of sludge in the receiving stream; 30 TAC §305.125(1),

TPDES Permit Number WQ0010591001, Interim Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, total suspended solids, ammonia-nitrogen, flow, total chlorine residual, and carbonaceous biochemical oxygen demand; 30 TAC §305.125(17) and TPDES Permit Number WQ0010591001, Sludge Provisions, by failing to timely submit monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010591001, Monitoring and Reporting Requirements Number 7.c., by failing to report in writing to the TCEQ any effluent violation which deviates from the permitted effluent limitations by more than 40%; PENALTY: $194,725; Supplemental Environmental Project (SEP) offset amount of $120,897 applied to erosion control project; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Rincon Water Supply Corporation; DOCKET NUMBER: 2007-2014-PWS-E; IDENTIFIER: RN101458776 and RN101250538; LOCATION: Taft, San Patricio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a chloramine residual of 0.5 mg/L throughout the distribution system; 30 TAC §290.46(l), by failing to flush the dead-end mains at monthly intervals; 30 TAC §290.45(f)(1), by failing to make available to the executive director the water purchase contract; 30 TAC §290.43(c)(6), by failing to maintain potable water storage tanks thoroughly tight against leakage; 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; 30 TAC §290.110(e)(4), by failing to submit a quarterly distribution report; and 30 TAC §290.110(c)(5)(B), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; PENALTY: $3,071; Supplemental Environmental Project (SEP) offset amount of $2,457 applied to Audubon Society-North Bay Sanctuary Project; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: City of Rockdale; DOCKET NUMBER: 2008-0023-MLM-E; IDENTIFIER: RN101190189; LOCATION: Rockdale, Milam County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2) and §290.46(f)(3)(D)(iii), by failing to provide water system records to commission personnel at the time of the investigation; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.46(u), by failing to plug and seal an abandoned public water supply well in accordance with 16 TAC Chapter 76 or return the well to a non-deteriorated condition; 30 TAC §290.46(s)(1), by failing to calibrate the water system's well meters; 30 TAC §290.43(c)(4), by failing to provide the 20,000 gallon storage tank and the below ground storage tank with a water level indicator; 30 TAC §290.42(l), by failing to maintain a plant operations manual for operator review and reference; 30 TAC §290.44(h)(4), by failing to test backflow prevention assemblies on an annual basis; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to provide a copy of an adopted drought contingency plan; PENALTY: $7,022; Supplemental Environmental Project (SEP) offset amount of $5,618 applied to Cleanup of Unauthorized Dumpsite; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Saint-Gobain Vetrotex America, Inc.; DOCKET NUMBER: 2008-0216-AIR-E; IDENTIFIER: RN100218601; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: fiberglass manufacturing plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), NSR Permit Number 5667/PSD-TX-784M1, SC 1, and THSC, §382.085(b), by failing to comply with the 4.58 pounds per hour (lbs/hr) particulate matter (PM) emission limit; and 30 TAC §101.20(3) and §116.115(c), NSR Permit Number 5667/PSD-TX-784M1, SC 1, and THSC, §382.085(b), by failing to comply with the 9.17 lbs/hr PM emission limit; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2007-1940-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5572B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial notification within 24 hours of the discovery of the emissions event; PENALTY: $4,940; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Swati Holding, Company dba Ellinger Shell; DOCKET NUMBER: 2007-1965-PST-E; IDENTIFIER: RN105068209; LOCATION: Ellinger, Fayette County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.72(3), by failing to report a suspected release; PENALTY: $7,850; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(17) COMPANY: Tapia Brothers, Inc. dba Tapia Dairy #2; DOCKET NUMBER: 2008-0035-AGR-E; IDENTIFIER: RN102954666; LOCATION: Tom Green County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Confined Animal Feeding Operation (CAFO) General Permit Number TXG920974, Part III.A.3., by failing to provide an adequate recharge feature certification in the pollution prevention plan (PPP); 30 TAC §321.39(c) and TPDES CAFO General Permit Number TXG920974, Part III.A.9(b)(1), by failing to remove sludge from a retention control structure (RCS) in accordance with the design schedule for cleanout; 30 TAC §321.38(g)(3)(E) and TPDES CAFO General Permit Number TXG920974, Part III.A.6(a)(2), by failing to maintain a copy of the capacity certification for RCS Number 1 in the PPP; and 30 TAC §321.46(c)(1), by failing to ensure that a licensed Texas professional engineer or licensed Texas professional geoscientist has conducted a site evaluation of the structural controls, including a review of the liner documentation; PENALTY: $3,689; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(18) COMPANY: Texas State Technical College; DOCKET NUMBER: 2008-0055-MLM-E; IDENTIFIER: RN101236925; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §288.30(5)(B), by failing to submit and adopt a drought contingency plan; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with proper provisions for proper enforcement; 30 TAC §290.45(f)(1) and (f)(5), by failing to provide a purchase water contract that allows the maximum hourly purchase rate of at least two gallons per minute per connection; 30 TAC §290.110(c)(5)(B),

by failing to monitor the disinfectant residual samples at representative locations throughout the distribution system on a daily basis; 30 TAC §§290.46(q), 290.110(b)(4), and 290.122(a)(2) and THSC, §341.0315(c), by failing to maintain a chloramine residual of at least 0.5 mg/L throughout the distribution system at all times and issue a boil water notice; and 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual; PENALTY: $6,406; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2008-0053-IWD-E; IDENTIFIER: RN100572551; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and Texas Land Application Permit (TLAP) Number 03750 Special Provision G, by failing to submit a detailed management plan to evaluate disposal sites 1, 2, 5, and 6 within 90 days of permit issuance; and 30 TAC §305.125(1) and TLAP Number 03750 Special Provision H.3., by failing to demonstrate that the existing impoundments which are in use or wastewater management comply with the liner requirements contained in the permit or to implement an approved groundwater monitoring program within one year of permit issuance; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(20) COMPANY: Trunkline Gas Company, LLC; DOCKET NUMBER: 2008-0033-AIR-E; IDENTIFIER: RN100225556; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: natural gas transmission station; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to operate Engines 4301 and 4302; PENALTY: $13,800; Supplemental Environmental Project (SEP) offset amount of $5,520 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200801970
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2008

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Enforcement Orders

An agreed order was entered regarding City of La Coste, Docket No. 2005-0264-MWD-E on April 4, 2008 assessing $8,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ivory Cleaners II, Inc. dba Ivory Cleaners & Alterations, Docket No. 2006-0676-DCL-E on April 4, 2008 assessing $280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Coleman, Staff Attorney at (817) 588-5917, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonny Nguyen dba Crystal Cleaners & Alteration, Docket No. 2006-0677-DCL-E on April 4, 2008 assessing $2,370 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gatesville, Docket No. 2006-0683-PWS-E on April 4, 2008 assessing $7,553 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Berry Cleaners, Inc., Docket No. 2006-0818-DCL-E on April 4, 2008 assessing $1,067 in administrative penalties with $214 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Yetta Hustead dba High Five, Docket No. 2006-0944-PWS-E on April 4, 2008 assessing $1,755 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2006-0958-AIR-E on April 4, 2008 assessing $42,014 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Environmental Recycling Technologies LLC, Docket No. 2006-1019-AIR-E on April 4, 2008 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & R Mobile Home Management, Inc. dba Blessing Mobile Home Park, Docket No. 2006-1036-PWS-E on April 4, 2008 assessing $1,595 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Process Steel, L.P., Docket No. 2006-1440-AIR-E on April 4, 2008 assessing $3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IZ, Inc. IZ Food Mart, Docket No. 2006-1825-PST-E on April 4, 2008 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Charles O. Cullins dba Thelbert Elkins Texaco, Docket No. 2007-0236-PST-E on April 4, 2008 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kathie Bryant dba Buena Vista Water System, Docket No. 2007-0304-PWS-E on April 4, 2008 assessing $8,931 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical Corporation, Docket No. 2007-0581-MLM-E on April 4, 2008 assessing $23,775 in administrative penalties with $4,755 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manshack & Sons, Inc., Docket No. 2007-0656-MSW-E on April 4, 2008 assessing $2,540 in administrative penalties with $508 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemtrade Refinery Services, Inc., Docket No. 2007-0742-AIR-E on April 4, 2008 assessing $34,119 in administrative penalties with $6,823 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Choate dba Pop's Tire Shop, Docket No. 2007-0867-MSW-E on April 4, 2008 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Israel R. Gonzalez, Docket No. 2007-0920-LII-E on April 4, 2008 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike Einkauf Custom Homes, Inc., Docket No. 2007-1026-WQ-E on April 4, 2008 assessing $2,700 in administrative penalties with $540 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martindale Water Supply Corporation, Docket No. 2007-1038-PWS-E on April 4, 2008 assessing $571 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Keffer, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-1079-AIR-E on April 4, 2008 assessing $38,179 in administrative penalties with $7,635 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Dechert, Docket No. 2007-1084-MLM-E on April 4, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Industrial Coatings, Incorporated, Docket No. 2007-1132-AIR-E on April 4, 2008 assessing $1,700 in administrative penalties with $340 deferred.

Information concerning any aspect of this order may be obtained by contacting LaMia Handy, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kim Moore dba Smith Springs Road Mobile Home Park, Docket No. 2007-1143-PWS-E on April 4, 2008 assessing $1,375 in administrative penalties with $275 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cory Byron, Docket No. 2007-1172-WQ-E on April 4, 2008 assessing $2,040 in administrative penalties with $408 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1189,-AIR-E on April 4, 2008 assessing $8,800 in administrative penalties with $1,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arash The Archer Corporation dba Corner Food Store, Docket No. 2007-1239-PST-E on April 4, 2008 assessing $4,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arledge Ridge Water Supply Corporation, Docket No. 2007-1262-PWS-E on April 4, 2008 assessing $1,350 in administrative penalties with $270 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC dba 7-Eleven, Docket No. 2007-1268-AIR-E on April 4, 2008 assessing $17,450 in administrative penalties with $3,490 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Waelder, Docket No. 2007-1278-MWD-E on April 4, 2008 assessing $3,200 in administrative penalties with $640 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viridis Energy (Texas), LP, Docket No. 2007-1292-AIR-E on April 4, 2008 assessing $4,387 in administrative penalties with $877 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kiewit Texas Construction L.P., Docket No. 2007-1297-AIR-E on April 4, 2008 assessing $3,120 in administrative penalties with $624 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clifco Construction, Ltd., Docket No. 2007-1313-MLM-E on April 4, 2008 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Martindale dba Sundance Dairy, Docket No. 2007-1323-AGR-E on April 4, 2008 assessing $1,575 in administrative penalties with $315 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles J. Engle, Docket No. 2007-1328-AIR-E on April 4, 2008 assessing $4,620 in administrative penalties with $924 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2007-1335-AIR-E on April 4, 2008 assessing $24,700 in administrative penalties with $4,940 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Smith County Water Control and Improvement District No. 1, Docket No. 2007-1348-MWD-E on April 4, 2008 assessing $13,275 in administrative penalties with $2,655 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2007-1358-AIR-E on April 4, 2008 assessing $30,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1367-AIR-E on April 4, 2008 assessing $7,050 in administrative penalties with $1,410 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blue Line Corporation, Docket No. 2007-1378-AIR-E on April 4, 2008 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ATCO-VALLEY PLAZA, LLC, Docket No. 2007-1379-IWD-E on April 4, 2008 assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gregory Alan Lewis dba GAL Horticulture Service, Docket No. 2007-1383-LII-E on April 4, 2008 assessing $875 in administrative penalties with $175 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 761-3038, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Military Highway Water Supply Corporation, Docket No. 2007-1387-MWD-E on April 4, 2008 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INVISTA S.a.r.l., Docket No. 2007-1392-AIR-E on April 4, 2008 assessing $11,100 in administrative penalties with $2,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2007-1405-MWD-E on April 4, 2008 assessing $6,200 in administrative penalties with $1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corpus Christi, Docket No. 2007-1409-MLM-E on April 4, 2008 assessing $11,076 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210)403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roger Allen Lund dba Hickory Ridge Mobile Home Park, Docket No. 2007-1453-MWD-E on April 4, 2008 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELG Metals, Inc., Docket No. 2007-1457-IWD-E on April 4, 2008 assessing $5,670 in administrative penalties with $1,134 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SI Group, Inc., Docket No. 2007-1461-AIR-E on April 4, 2008 assessing $5,700 in administrative penalties with $1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shepherd, Docket No. 2007-1463-MWD-E on April 4, 2008 assessing $8,600 in administrative penalties with $1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Targa Midstream Services Limited Partnership, Docket No. 2007-1477-AIR-E on April 4, 2008 assessing $2,990 in administrative penalties with $598 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S & K Iman, Inc., Docket No. 2007-1515-PST-E on April 4, 2008 assessing $2,850 in administrative penalties with $570 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rayburn Country Municipal Utility District, Docket No. 2007-1519-MWD-E on April 4, 2008 assessing $4,410 in administrative penalties with $882 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double B Foods, Inc., Docket No. 2007-1526-AIR-E on April 4, 2008 assessing $16,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FMC Corporation, Docket No. 2007-1530-AIR-E on April 4, 2008 assessing $5,650 in administrative penalties with $1,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AHZ, LLC, MZH, LLC, ZAO, LLC, and Patrinely Group, LLC, Docket No. 2007-1626-EAQ-E on April 4, 2008 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Angleton, Docket No. 2007-1660-MWD-E on April 4, 2008 assessing $11,250 in administrative penalties with $2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boyett Construction, L.L.C., Docket No. 2007-1666-WQ-E on April 4, 2008 assessing $1,680 in administrative penalties with $336 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Creek Park Corporation, Docket No. 2007-1684-MWD-E on April 4, 2008 assessing $2,200 in administrative penalties with $440 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aero-Marine Engineering, Inc., Docket No. 2007-1770-AIR-E on April 4, 2008 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Sidney Wheeler, Enforcement Coordinator at (512) 239-4969, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LP, Docket No. 2007-1791-AIR-E on April 4, 2008 assessing $6,500 in administrative penalties with $1,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Bosque Water Supply Corporation, Docket No. 2007-1795-PWS-E on April 4, 2008 assessing $535 in administrative penalties with $107 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Parkway Construction & Associates LP, Docket No. 2007-1923-WQ-E on April 4, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding HH Farms, LLC, Docket No. 2007-1909-PST-E on April 4, 2008 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Franklin Bain, Docket No. 2007-1968-WOC-E on April 4, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Parkway Construction & Associates, L.P., Docket No. 2007-1923-WQ-E on April 4, 2008 assessing $700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Sam R. Dillon dba Sam's Produce Farm, Docket No. 2004-0639-PST-E on April 7, 2008 assessing $16,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200801996
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 16, 2008

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Notice of District Petition

Notice issued April 9, 2008

Texas Commission on Environmental Quality (TCEQ) Internal Control No. 02132008-D02; Robert M. Tiemann (the "Petitioner") filed a petition for creation of Lakeside Municipal Utility District No. 5 of Travis and Williamson counties (the "District") with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 198.69 acres located in Travis and Williamson counties, Texas; and (3) the proposed District is within the extraterritorial jurisdiction of the City of Pflugerville, Texas. The Petitioner, by separate affidavit, indicates that there is one lien holder, International Bank of Commerce, on the property to be included in the proposed District. The Petitioner has provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District. By Resolution No. 687-05-02-22-8B, effective February 22, 2005, the City of Pflugerville, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $19,670,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper

publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200801995
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 16, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 26, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 26, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Andres E. Pascual dba DCSC Market and dba 125 Dry Clean Super Center; DOCKET NUMBER: 2006-1290-DCL-E; TCEQ ID NUMBERS: RN104952189 and RN100909738; LOCATIONS: 10705 Market Street, Suite B, Jacinto City and 2630 South Dairy Ashford Street, Houston, Harris County, Texas; TYPE OF FACILITIES: dry cleaning drop station and dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for both facilities; PENALTY: $1,778; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Chilton Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2005-0887-MWD-E; TCEQ ID NUMBER: RN102285814; LOCATION: approximately 0.7 mile east of State Highway 77, one mile south of the City of Chilton, Falls County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Water Code (TWC), §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10811-001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 4, Operational Requirements Number 1, and Permit Conditions Number 2.g., by failing to prevent the discharge and accumulation of solids in the receiving stream and unauthorized discharges which had occurred around the influent bar screen and aeration basin; 30 TAC §305.125(1) and (5) and TPDES Permit Number 10811-001, Operational Requirement Number 1, by failing to ensure to that all systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §§305.125(1), 319.4, 319.7(a) and (c), and 319.11(b) and TPDES Permit Number 10811-001, Monitoring and Reporting Requirements Numbers 2, 3.b., and 3.c., by failing to have records available for review by a TCEQ representative during the investigation conducted on February 9, 2005; 30 TAC §305.125(1) and (9) and TPDES Permit Number 10811-001, Monitoring and Reporting Requirements Numbers 7.a. and 7.c., Section III. Requirements Applying to All Sewage Sludge Disposed in a Municipal Solid Waste Landfill, and Paragraph G. Reporting Requirements, by failing to report exceedances which deviated from the permitted limit by greater than 40%, by failing to report an unauthorized discharge, and by failing to submit an annual sludge report; and 30 TAC §317.4(a)(8), by failing to conduct the required annual testing of the drinking water backflow prevention device; PENALTY: $22,750; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Laredo; DOCKET NUMBER: 2007-0441-MLM-E; TCEQ ID NUMBERS: RN100524099 and RN101608545; LOCATION: 2519 Jefferson Street, Laredo, Webb County, Texas; TYPE OF FACILITIES: public water supply system, public water utility, and wastewater treatment plant; RULES VIOLATED: 30 TAC §290.44(h), by failing to conduct an annual inspection, tested by a certified backflow prevention assembly tester, on all backflow prevention assemblies used for health hazard protection; 30 TAC §290.46(f)(4)(A), by failing to provide the number of connections in the distribution system which is required to determine compliance with the requirements of 30 TAC Chapter 290; 30 TAC §290.42(e), by failing to house all gas chlorination and ammonia equipment in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; 30 TAC §290.46(s), by failing to provide accurate testing equipment or some other means of monitoring the effectiveness of any chemical treatment process used by the system or to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least once every 30 days using chlorine solutions of known concentrations; 30 TAC §290.46(d)(2), by failing to maintain a minimum free chlorine residual of 0.2 milligrams per liter (mg/L) or total chlorine of 0.5 mg/L throughout the distribution system at all times; 30 TAC §290.46(m)(4), by failing to maintain all water facilities and related appurtenances in a watertight condition; 30 TAC §290.111(c)(2), by failing to correctly monitor the turbidity of the combined filter effluent; 30 TAC §290.111(c)(3), by failing to correctly monitor the filtered water turbidity of the individual filter effluent; 30

TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §291.93(3), by failing to submit to the executive director a planning report that clearly explains how the retail public utility, that has reached 85% of its capacity, will provide the expected service demands to the remaining areas within the boundaries of its certified area; and 30 TAC §305.125(1) and TPDES Permit Number 10681-001 Sludge Provisions, by failing to submit the annual sludge report to the commission by September 1, 2006; PENALTY: $8,030; Supplemental Environmental Project offset amount of $8,030 applied to Texas Association of Resource Conservation & Development Areas, Inc. Water or Wastewater Treatment Assistance; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: David W. Trammell; DOCKET NUMBER: 2007-0050-LII-E; TCEQ ID NUMBER: RN103654075; LOCATION: 1795 North Fry Road #299, Katy, Harris County, Texas; TYPE OF FACILITY: unlicensed irrigator; RULES VIOLATED: 30 TAC §30.5(a) and §344.4, TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to possess an irrigator license issued by the TCEQ prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $625; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: FPN Enterprises, Inc. dba Kuykendahl Valero; DOCKET NUMBER: 2006-2257-PST-E; TCEQ ID NUMBER: RN102275096; LOCATION: 4740 Spring Cypress Road, Spring, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), and (d)(1)(B) and TWC, §26.3475(a) and (c)(1), by failing to ensure that all underground storage tanks (USTs) are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to provide proper release detection for the pressurized piping associated with the UST system, by failing to have line leak detectors tested at least once per year for performance and operational reliability, and by failing to conduct proper inventory control procedures for all USTs at the facility; 30 TAC §334.8(c)(5)(B)(ii), by failing to renew a delivery certificate by timely and proper submission of a completed UST registration and self-certification form to the agency at least 30 days before the expiration date of the delivery certificate; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $4,400; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: J.W. Garrett & Son, Inc. dba G & G Enterprises; DOCKET NUMBER: 2007-1042-WQ-E; TCEQ ID NUMBER: RN105134498; LOCATION: 3050 Dowlen Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of storm water into waters in the State; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to develop and implement a stormwater pollution prevent plan and by failing to sign and post a construction site notice for a small construction activity (less than five acres but greater than one acre of disturbed land); PENALTY: $4,200; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Neptune International, Inc. dba Pick N Pay; DOCKET NUMBER: 2005-0961-PST-E; TCEQ ID NUMBER: RN102464559; LOCATION: 2510 Berry Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects which would impair the effectiveness of the system, including absence or disconnection of components which are part of the approved system, as specified by the manufacture and/or any applicable California Air Resources Board (CARB) Executive Order(s); 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the system by not performing required annual and triennial testing of the system; 30 TAC §115.246(1), (3), (4), (6), and (7)(A) and THSC, §382.085(b), by failing to maintain on-site and make immediately available for review upon request by a TCEQ representative the following records: a copy of the CARB Executive Order(s) or third-party certification(s) for the system and related components installed at the station; a record of any maintenance conducted on the system; proof of attendance and completion of Stage II training requirements and documentation of such training for current station employees; and a record of the results of daily inspections conducted at the station; 30 TAC §334.45(c)(3)(A), by failing to have on each pressurized delivery or product line a UL-listed emergency shutoff valve installed and securely anchored at the base of the dispenser; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control for the UST system; 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to regularly inspect, at least once every 60 days, the cathodic protection system and by failing to have the cathodic protection system inspected and tested by a qualified corrosion specialist or corrosion technician within three to six months after installation and at a subsequent frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A), (2), and (2)(A)(i)(III) and TWC, §26.3475(c)(1) and (a), by failing to provide proper release detection for the UST system; PENALTY: $19,950; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(8) COMPANY: The Meadows at Quail Run GP, LLC; DOCKET NUMBER: 2005-1956-MWD-E; TCEQ ID NUMBER: RN103764213; LOCATION: 120 Las Palomas Drive, La Vernia, Wilson County, Texas; TYPE OF FACILITY: wastewater collection system; RULES VIOLATED: 30 TAC §30.350(n), by failing to have at least one operator for the sewage collection system that holds a minimum of a Class I license; and 30 TAC §317.1(a)(2) and (3)(D), and (c), by failing to submit a summary transmittal letter and all engineering design plans and reports concerning the technical specifications of the sewage collection system to the commission and by failing to obtain commission approval of the sewage collection system prior to utilizing it; PENALTY: $27,300; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: WHB Cattle, L.P.; DOCKET NUMBER: 2004-2023-MLM-E; TCEQ ID NUMBER: RN104393855; LOCATION: 17095 Farm-to-Market Road 3004, near Follett, Lipscomb County, Texas; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: 30 TAC §321.33(a), by failing to obtain authorization under a water quality general permit or individual permit for a CAFO; 30 TAC §335.5(a) and (b), by failing to deed record the location and notify the TCEQ prior to the disposal of dead animals; and 30 TAC §285.3(b)(1) and THSC, §366.051(a), by failing to ob-

tain authorizations to construct prior to the construction and operation of four on-site sewage facilities; PENALTY: $5,000; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Ya Razzak, Inc. dba Fast Trak; DOCKET NUMBER: 2006-1371-AIR-E; TCEQ ID NUMBER: RN100814342; LOCATION: 8209 North Loop Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the 7.0 pounds per square inch absolute maximum Reid Vapor Pressure requirement for gasoline transferred during the control period of June 1 - September 16, 2006 in El Paso County; PENALTY: $1,200; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200801967
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 26, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 26, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Juan Antonio Diaz dba Tony's Tire Service; DOCKET NUMBER: 2007-1821-MSW-E; TCEQ ID NUMBER: RN105359392; LOCATION: west and south of 17115 Martinez Losoya Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: automobile tires service facility; RULES VIOLATED: 30 TAC §328.60(a) and §330.7(a), by failing to obtain a scrap tire storage registration prior to storing more than 500 tires; and 30 TAC §328.57(c), by failing to register with the TCEQ as a tire transporter prior to transporting used or scrap tires; PENALTY: $12,500; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Michael Lantz O'Neill dba Frontier Park Marina; DOCKET NUMBER: 2007-0712-PWS-E; TCEQ ID NUMBER: RN101183986; LOCATION: Highway 21, Toledo Bend Reservoir, Sabine County, Texas; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.42(l), by failing to compile a plant operation manual and to keep it up to date for operator review and reference; 30 TAC §290.43(c)(4), by failing to provide a water level indicator on the ground storage tank at Water Plant Number 1; 30 TAC §290.44(a)(4), by failing to locate all water transmission and distribution lines at least 24 inches below ground surface; 30 TAC §290.121(a), by failing to maintain an up to date chemical and microbiological monitoring plan; 30 TAC §290.46(v), by failing to install all water system electrical wiring in accordance with a local or national electrical code; 30 TAC §290.46(t), by failing to post a legible sign at Water Plant Number 2 which gives the name of the owner and an emergency telephone number for contacting a responsible official; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage date; 30 TAC §290.43(d)(2), by failing to provide a working pressure gauge on the 1,000 gallon pressure tank at Water Plant Number 2; 30 TAC §290.46(m)(4), by failing to ensure all water system storage and pressure maintenance facilities and appurtenances are maintained in a water-tight condition; 30 TAC §290.109(c)(1)(A) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect routine bacteriological samples at active service connections which are representative of water throughout the distribution system; 30 TAC §290.46(f)(3)(A)(iv), by failing to record the dates of monthly dead-end flushing; 30 TAC §290.46(n)(2), by failing to provide an up to date map of the distribution system to help locate valves and mains in the event of an emergency; 30 TAC §290.45(b)(1)(B)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(B)(iv) and (c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection for the community connections and 10 gallons per connection for non-community connections; 30 TAC §290.41(c)(3)(j), by failing to provide the well with a concrete sealing block around the well casing that extends a minimum of three feet in all directions; and 30 TAC §290.44(h)(1), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; PENALTY: $6,670; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: WSWS Company; DOCKET NUMBER: 2006-1984-PWS-E; TCEQ ID NUMBER: RN101218121; LOCATION: west of Farm-to-Market Road 1417 on Pumping Jack Road, Grayson County, Texas; TYPE OF FACILITY: PWS; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile a plant operations manual and keep it up-to-date for operator review and reference; 30 TAC

§290.41(c)(1)(F), by failing to obtain a sanitary control easement for well number one or an exception to the easement requirement that is approved by the commission; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block extending a minimum of three feet from the exterior well casing in all directions; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the well site; 30 TAC §290.43(c)(1), by failing to provide the vent opening on the ground storage tank with a 16-mesh or finer corrosion-resistant screening; 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(C)(iv), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.43(c)(5), by failing to properly locate the inlet and outlet connections so as to prevent short-circuiting or stagnation of water within the ground storage tank; PENALTY: $1,050; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801968
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2008

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 26, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 26, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: SAO Traders, Inc. dba Stop N Drive 2; DOCKET NUMBER: 2005-1174-PST-E; TCEQ ID NUMBER: RN102471190; LOCATION: 7431 Highway 59 South, Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate was posted at the facility in a location where the document is clearly visible at all times; 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor base of each UL-listed emergency shutoff valve (shear or impact) in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.49(c)(4) and (c)(2)(C) and Texas Water Code (TWC), §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A), (2), (2)(A)(i)(III), (d)(1)(B)(ii), and (iii)(IV) and TWC, §26.3475(a) and (c)(1), by failing to provide proper release detection for the UST system; PENALTY: $9,500; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200801969
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 15, 2008

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Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment

For the Period of April 7, 2008

APPLICATION. TAP Inc. dba Big K Environmental, 423 Little York Road, Houston, Harris County, Texas 77076, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type V permit major amendment in order to increase the facility's receiving and processing capacity to 80,000 gallons per day. The facility is located at the address listed above. The TCEQ received the application on February 14, 2008. The permit application is available for viewing and copying at The TCEQ Region 12 Office-TCEQ Houston, 5425 Polk Avenue, Suite H, St., Houston, Harris County, Texas and on the internet at www.TAPenviro.com.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the

mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from TAP Inc. dba Big K Environmental at the address stated above or by calling Mr. Mark Urback, P.E., at (281) 373-0500.

TRD-200801994
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 16, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of March 27, 2008 through April 10, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ARKEMA INC. which operates the Houston Chemical Plant, has applied for a major amendment to TPDES Permit No. WQ0000445000 to authorize the discharge of storm water via new Outfalls 003, 004, and 005; remove effluent limitations and monitoring requirements for the parameters regulated by EPA categorical guidelines (40 CFR Part 414); reclassify the facility as a non-major facility (under the EPA NPDES major classification system); and remove biomonitoring requirements for Outfalls 001 and 002. The current permit authorizes the discharge of equipment wash water, utility wastewater, domestic sewage (previously monitored from Outfall 101) and storm water at a daily average flow not to exceed 400,000 gallons per day via Outfall 001; and storm water commingled with equipment wash water, utility wastewater, and treated domestic sewage (previously monitored from Outfall 001) on an intermittent and flow variable basis via Outfall 002. The facility is located at 2231 Haden Road in the City of Houston, Harris County, Texas.

BAHRAN SOLHJOU has applied for a renewal of TPDES Permit No. WQ0012882001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 0.5 mile northwest of the intersection of Gulf Bank Road and Hardy Toll Road in Harris County, Texas.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. WQ0010395002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,200,000 gallons per day. The facility is located at 1601 West Main Street in Harris County, Texas.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. WQ0010395010, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility will be located 5,000 feet south of Interstate Highway 10, adjacent to the east right-of-way of Union Pacific Railroad, west of State Highway 146 in Harris County, Texas.

BULVERDE/46 PARTNERS, LTD. has applied for a new permit, Proposed Permit No. WQ0014741001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 9,500 gallons per day via public access subsurface drip irrigation system with a

minimum area of 95,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1/4 mile south and west of the intersection of Highway 281 and Highway 46 in Comal County, in the drainage basin of Lewis Creek in Segment No. 1806 of the Guadalupe River Basin.

THE CITY OF CORSICANA has applied for a renewal of TCEQ Permit No. WQ0010402003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,950,000 gallons per day for Outfall 001 and an annual average flow not to exceed 1,000,000 gallons per day for Outfall 002. The application also requests an extension of a temporary variance to the existing water quality standards for the dissolved oxygen criterion for the Post Oak Creek arm of Richland-Chambers Reservoir which was granted in the permit issued April 11, 2005. The facility is located approximately 2,200 feet north of the Lake Halbert Spillway and approximately 9,500 feet southeast of the intersection of State Highway 31 and Interstate Highway 45 in Navarro County, Texas.

Consideration of the application by ELMER JACK PARKS for a major amendment of, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003590000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 700 total head of which 700 head are milking and an increase in Land Management Unit (LMU) acreage from 400 acres to 839 acres. The facility and on-site LMUs are located on both sides of County Road 297, approximately one half (0.50) mile south of it's intersection with Farm-to-Market Road 8. This intersection is located approximately one and one half (1.5) miles east of the intersection of Farm-to-Market Road 8 and Farm-to-Market Road 219 in Lingleville, Erath County, Texas. The off-site LMUs are located on the north side of Farm-to-Market Road 8, approximately 1 mile east of the intersection of County Road 297 and Farm-to-Market Road 8.

FOREST GLEN, INC. has applied for a renewal of TPDES Permit No. WQ0011844001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 6 miles southeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 2296 in Walker County, Texas.

JOHANN HALTERMANN LTD. which operates Dow Haltermann Plant 1, has applied for a renewal of TPDES Permit No. WQ0002458000, which authorizes the discharge of treated process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 220,000 gallons per day via Outfall 001; storm water runoff on an intermittent and flow variable basis via Outfall 002 and 004; and non-contact heating water on an intermittent and flow variable basis via Outfall 003. The facility is located at 16717 Jacintoport Boulevard on the north bank of the Houston Ship Channel, approximately 1.6 miles east of the intersection of Sheldon Road and Jacintoport Boulevard, near the Community of Channelview, Harris County, Texas.

CITY OF MORTON has applied for a major amendment to Permit No. WQ0010226001, to authorize an increase in the daily average flow from 178,500 gallons per day to 225,000 gallons per day and to increase the acreage irrigated from 45.4 acres to 57.9 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 1 mile northeast of State Highway 214 and Farm-to-Market Road 1780 northeast of the City of Morton in Cochran County, Texas.

MOUNT HOUSTON ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011154001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1.3 miles northwest of the intersection of State Highway 249 (formerly Farm-to-Market Road 149, West Mount Houston Road) and Veterans Memorial Drive (formerly Stuebner Airline Drive) on the east bank of Halls Bayou in Harris County, Texas.

CITY OF PORT ARTHUR has applied for a renewal of TPDES Permit No. WQ0010364002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,750,000 gallons per day. The facility is located immediately northeast of the intersection of Farm-to-Market Road 365 and Rhodair Gully, approximately 6,000 feet west-southwest of the intersection of Farm-to-Market Road 365 and Port Arthur Road in Jefferson County, Texas.

PORTER MUNICIPAL UTILITY DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012242001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 7,200 feet south-southeast of the intersection of U.S. Highway 59 and Farm-to-Market Road 1314 and 2,100 feet east southeast of the intersection of Martin Drive and Loop 494 in Montgomery County, Texas.

RIO GRANDE MINING COMPANY which operates the Shafter Mine, a silver mining and processing facility, has applied for a major amendment to Permit No. WQ0004297000 to authorize the increase in the acreage of the Apartment disposal site to 18.1 acres; the reduction in acreage of the Arroyo disposal site to 8.7 acres; eliminating the use of three sites, the Saddle disposal site, the Basin disposal site and the Plateau disposal site; the addition of three disposal sites: South 5 Plot with 55.6 acres, South 8 Plot Area 1 with 40.7 acres and South 8 Plot Area 2 with 40.3 acres, for a total acreage of 163.4 acres proposed for disposal; and the decrease of the daily average flow limit from 550,000 gallons per day to 360,000 gallons per day. The current permit authorizes the disposal of mine dewatering water at a daily average flow not to exceed 550,000 gallons per day via irrigation. This permit will not authorize a discharge of pollutants into water in the State. The facility is located west of U.S. Highway 67, approximately one mile west of the Shafter townsite, Presidio County, Texas. The disposal site is located 1/2 mile south of the Shafter Mine, Presidio County, Texas. The facility and land application site are located in the drainage area of the Rio Grande, in Segment No. 2307 of the Rio Grande Basin.

TEXAS A & M UNIVERSITY has applied for a renewal of TPDES Permit No. WQ0011211001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately one mile north of the intersection of U.S. Highway 90 and Aggie Drive and approximately 2.5 miles east of the City of China in Jefferson County, Texas.

CITY OF TOMBALL has applied for a renewal of TPDES Permit No. WQ0010616002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located south of Holderrieth Road approximately 2,100 feet north of Willow Creek and approximately 4,300 feet east of the intersection of State Highway 249 and Holderrieth Road in Harris County, Texas.

TRINITY PINES CONFERENCE CENTER, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014842001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. Authorization to discharge was previously permitted by expired permit No. WQ0012371001. The facility is located approximately 1,500 feet west of Lake Livingston, and ap-

proximately 1,400 feet north of Farm-to-Market Road 356 in Trinity County, Texas.

TRD-200801993
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 16, 2008

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 10, 2008, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Klaas Talsma dba Talsma Dairy; SOAH Docket No. 582-08-0090; TCEQ Docket No. 2007-0543-AGR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Klaas Talsma dba Talsma Dairy on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200801997
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 16, 2008

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) solicits qualified organizations to operate the Gulf Coast Workforce Board's regional system, known as The WorkSource. A proposal package will be available for download at http://www.h-gac.com or http://www.theworksource.org beginning at 12:00 noon Central Standard Time on Monday, April 14, 2008. Hard copies of the proposal package will also be available at that time. A bidder's conference is scheduled for Wednesday April 23, 2008, from 9:00 a.m. to 11:00 a.m. at The United Way Community Resource Center, 50 Waugh Dr., Houston, Texas 77007.

Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Saving Time on Thursday, May 8, 2008. Mailed proposals must be postmarked no later than Monday, May 5, 2008. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200801957
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: April 14, 2008

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Texas Department of Housing and Community Affairs

Hearing Notice for Costa Ibiza Apartments (Series 2008)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Ramada Inn Houston-North, 16510 I-45 North, Houston, Texas 77090, at 6:00 p.m. on May 21, 2008, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Costa Ibiza, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 216-unit multifamily residential rental development located at approximately 17000 Hafer Road, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200801971
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 15, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of GENERAL FIRE & CASUALTY COMPANY to AMERICAN FARMERS & RANCHERS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application for admission to the State of Texas by ENVISION INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Twinsburg, Ohio.

Application for admission to the State of Texas by LEADING INSURANCE GROUP INSURANCE COMPANY, LTD. (US BRANCH), a foreign fire and/or casualty company. The home office is in Fort Lee, New Jersey

Application for admission to the State of Texas by THE CINCINNATI INDEMNITY COMPANY, a foreign fire and/or casualty company. The home office is in Fairfield Ohio.

Application to change the name of COMMERCIAL GUARANTY CASUALTY INSURANCE COMPANY to MAX AMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in South Bend, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200801991
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 16, 2008

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Notice of Call for Issues Related to 2008 Biennial Title Hearing

Texas Insurance Code §§2703.201 et seq. require the Texas Department of Insurance to hold a biennial hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any association, any title insurance company, any title insurance agent, any member of the public, or as the Commissioner may determine necessary to consider. Notice of the hearing will appear in the *Texas Register* at a later date. This notice of call is issued to receive subjects and matters from any association, any title insurance company, any title insurance agent, or any member of the public such that notice of the matters to be considered at the biennial hearing be provided pursuant to the requirements of §§2703.203, 2703.204, 2703.205, 2703.207, and 2703.208. The scope of the hearing includes subjects and matters related to both real property title insurance and personal property title insurance. Any association, any title insurance company, any title insurance agent, or any member of the public that would like to request that any matter or subject, in addition to the rates for title insurance, be considered at the biennial hearing must provide a detailed description of the matter or subject no later than May 26, 2008.

All requests should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 (please refer to reference number T-0408-08-I). Such proposals and submissions must be submitted and made available in both paper and electronic format compatible and accessible by a computer using the Windows XP operating system and the Microsoft Word program. All information submitted in electronic format to the Office of the Chief Clerk shall be submitted in a format that does not require the use of passwords or any other security measure for accessibility and utilization by the Department.

TRD-200801910
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 10, 2008

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Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2683 on May 1, 2008 at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of a reinsurance program to operate in addition to or in concert with the catastrophe reserve trust fund established under Chapter 2210, Subchapter J of the Insurance Code. The Insurance Code §2210.453 provides that, with the approval of the Texas Department of Insurance (Department), TWIA may establish a reinsurance program that operates in addition to or in concert with the catastrophe reserve trust fund. The new program is proposed to be effective as of June 1, 2008.

The hearing is held pursuant to the Insurance Code §2210.008, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Chapter 2210, including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the proposed reinsurance program.

Copies of the TWIA petition and proposed reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. To request copies of the petition and the proposed reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0408-07).

TRD-200801972
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 15, 2008

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Texas Lottery Commission

Instant Game Number 1039 "$1,000 Blackjack"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1039 is "$1,000 BLACKJACK". The play style is "beat score".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1039 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1039.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100 and $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1039 - 1.2D

PLAY SYMBOL	CAPTION
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00 or $100.

H. High-Tier Prize - A prize of $1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1039), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1039-0000001-001.

K. Pack - A pack of "$1,000 BLACKJACK" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$1,000 BLACKJACK" Instant Game No. 1039 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$1,000 BLACKJACK" Instant Game is determined once the latex on the ticket is scratched off to expose 14 (fourteen) Play Symbols. If the total of any HAND is greater than the total of the DEALER'S HAND, the player wins the prize shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 14 (fourteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 14 (fourteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 14 (fourteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 14 (fourteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning HANDS on a ticket.

D. The DEALER'S HAND will never total 21.

E. No ties between the DEALER'S HAND and HAND 1 through HAND 4.

F. No HAND on a ticket will contain two A play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "$1,000 BLACKJACK" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $40.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$1,000 BLACKJACK" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$1,000 BLACKJACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$1,000 BLACKJACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$1,000 BLACKJACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1039. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1039 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	734,400	11.11
$2	598,400	13.64
$4	190,400	42.86
$5	54,400	150.00
$10	54,400	150.00
$20	28,220	289.16
$40	12,920	631.58
$100	1,700	4,800.00
$1,000	136	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1039

without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1039, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801902
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 9, 2008

♦ ♦ ♦

Instant Game Number 1057 "Set for Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1057 is "SET FOR LIFE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1057 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1057.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, $10.00, $20.00, $50.00, $100, $200, $1,000, $2,500 or $250K/YR SYMBOL.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1057 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY

$100	ONE HUND
$200	TWO HUND
$1,000	ONE THOU
$2,500	25 HUND
$250K/YR	250K/YR

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,500 or $250,000/year (not to exceed $5,000,000).

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1057), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1057-0000001-001.

K. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket 001 on the other side.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SET FOR LIFE" Instant Game No. 1057 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If the player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the PRIZE shown for that number. If the player reveals a COIN SYMBOL, the player wins the PRIZE shown instantly. If the player reveals a STAR SYMBOL, the player wins 10 times the prize shown. If the player reveals a LIFE SYMBOL, the player wins $250,000 a year (not to exceed $5,000,000 total). No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No five or more matching non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the $250,000/YR prize symbol and both symbols will only appear on the three winning tickets as dictated by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of $1,000 or $2,500, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "SET FOR LIFE" top level prize of $250,000 per year, (not to exceed $5,000,000 total), the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "SET FOR LIFE" Instant Game prize of $250,000 per year, (not to exceed $5,000,000 total the claimant will receive,

1. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $250,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of $250,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of $5,000,000.

2. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. As an alternative method of claiming a "SET FOR LIFE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1057. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1057 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,440,000	8.33
$20	1,200,000	10.00
$50	210,000	57.14
$100	166,000	72.29
$200	26,000	461.54
$500	3,500	3,428.57
$1,000	300	40,000.00
$2,500	200	60,000.00
$250K/YR	3	4,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1057 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1057, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200801903
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 9, 2008

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North Central Texas Council of Governments

Notice of Call for Projects

The North Central Texas Council of Governments (NCTCOG) is issuing a competitive call for projects to award Federal Transit Administration Job Access/Reverse Commute (49 U.S.C. §5316) and New Freedom (49 U.S.C. §5317) Program funds. Approximately $4.4 million in Job Access/Reverse Commute and $1.3 million in New Freedom funding is available for eligible projects selected in the Dallas-Fort Worth Metropolitan Area. The Job Access/Reverse Commute Program provides funding for local projects designed to transport low-income individuals to and from employment and employment-related activities or to transport residents of urban, rural and suburban areas to suburban employment opportunities. The New Freedom Program supports new services and facility improvements that address transportation needs of individuals with disabilities that go beyond those required by the Americans with Disabilities Act. Private non-profit organizations, State or local governmental authorities, and operators of public transportation services, including private operators of public transportation services are encouraged to submit projects for consideration. Detailed information on the call for projects can be obtained online at www.nctcog.org/jarc or by contacting Therese Bergeon at tbergeon@nctcog.org or (817) 695-2967.

Due Date

Project submittals are due at the NCTCOG offices no later than 5 p.m. Central Daylight Time on Friday, June 13, 2008. No late submittals will be accepted.

TRD-200801992
R. Michael Eastland
Executive Director
North Central Council of Governments
Filed: April 16, 2008

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Panhandle Regional Planning Commission

Correction to Request for Proposals

The Panhandle Regional Planning Commission (PRPC) is revising the Request for Proposals (RFP) to Manage and Operate a One-Stop Service Delivery System in the Panhandle Workforce Development Area issued on April 1, 2008, and published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2865).

Due to changes in funding expectations, PRPC has revised its instructions for proposals to be submitted in response to the RFP.

All prospective proposers who were sent a copy of the RFP have also been sent the revision notice detailing the change in proposal instructions. Others may obtain the revision notice by sending the contact and organization names, and mailing and e-mail addresses to Tony White, Assistant Director, Workforce Development, at twhite@theprpc.org. The revision notice may also be obtained in person at PRPC, 415 West Eighth Avenue, Amarillo, Texas 79101 between 8:00 a.m. to 5:00 p.m., Monday through Friday.

TRD-200801998
Tony White
Assistant Director, Workforce Development
Panhandle Regional Planning Commission
Filed: April 16, 2008

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 9, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35557 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Hewitt, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35557.

TRD-200801974
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 2008

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 8, 2008, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Timberlake Cablevision, Inc. d/b/a CMA Cablevision for a State-Issued Certificate of Franchise Authority, Project Number 35548 before the Public Utility Commission of Texas.

The requested CFA service area includes the City Limits of Sour Lake, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35548.

TRD-200801929
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 14, 2008

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Decision Not to Award Contract

On February 8, 2008, the Public Utility Commission of Texas (PUCT or commission) published Request for Proposals (RFP) 473-08-00174 to select a vendor to provide consulting expert services in connection with a contested case concerning abuse of market power. Notice for the issuing of the RFP was published in the *Texas Register* on February 8,

2008 (33 TexReg 1189) and in the Electronic State Business Daily on the same date. The RFP was issued pursuant to the PUCT's authority under Title II, Texas Utilities Code §39.1515.

Upon review of the proposal received, Lane Lanford, Executive Director of the PUCT, has determined not to award a contract.

TRD-200801949
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 14, 2008

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 11, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Telenational Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35560 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 30, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35560.

TRD-200801975
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 2008

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on April 9, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' request for two thousand-blocks of numbers on behalf of its customer, Pharr-San Juan-Alamo Independent School District (PSJA ISD) in the 956 Numbering Plan Area (NPA) in the Pharr rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35559.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 30, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35559.

TRD-200801973
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 15, 2008

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Notice of Application to Amend Certificated Service Area Boundaries in Robertson County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 8, 2008, for an amendment to certificated service area boundaries within Robertson County, Texas.

Docket Style and Number: Application of Entergy Texas, Inc. (ETI) to Amend a Certificate of Convenience and Necessity for Service Area Exception within Robertson County. Docket Number 35549.

The Application: ETI filed an application for a service area boundary exception to allow ETI to provide service to a specific customer located within the certificated service area of Navasota Valley Electric Cooperative, Inc. (NVEC). NVEC has provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 7, 2008 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35549.

TRD-200801930
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 14, 2008

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Public Notice of Request for Comments on Issues Related to Pre-Paid Service

The staff of the Public Utility Commission of Texas (Staff) is interested in taking comments for Project Number 35533, *PUC Rulemaking Proceeding Relating to Prepaid Service*.

Staff requests that interested persons file comments in response to the following questions regarding pre-pay service that do not use a Customer Prepayment Device or System as defined in PUC Substantive Rule §25.498, relating to *Retail Electric Service Using a Customer Prepayment Device or System*:

(1) What changes to the current PUC Substantive Rules and/or Electric Reliability Council of Texas (ERCOT) Protocols and Guides would help to facilitate the development of pre-pay products in Texas? Please specify which changes would be the most helpful.

(2) What changes to the current PUC Substantive Rules and/or ERCOT Protocols and Guides would help to ensure that pre-pay applicants and customers have the proper information and customer protections? Please specify which changes would be the most necessary.

(3) PUC Substantive Rule §25.474, relating to *Selection of Retail Electric Provider* sets forth requirements for the selection of a retail electric provider including the required documentation for enrollment.

(a.) Should there be different criteria for enrollment of pre-pay customers than are specified in the current rule?

(b.) Should the rights for the three day rescission period and switch notification apply when a customer has made a pre-payment?

(4) PUC Substantive Rule §25.475, relating to *Information Disclosures to Residential and Small Commercial Customers* sets forth requirements for information disclosures to customers. Should there be different requirements for disclosures to applicants or customers of pre-pay products, particularly relating to estimating consumption for prepayments and truing up estimated consumption to actual consumption?

(5) Should pre-pay providers be permitted to request deposits from customers? If so, should the allowed amount of deposit be different than that specified in PUC Substantive Rule §25.478, relating to *Credit Requirements and Deposits*?

(6) Should pre-pay providers be permitted to charge cancellation, termination, or deactivation fees?

(7) Should the rules set forth guidelines for the minimum or maximum terms of products? If so, what are appropriate terms?

(8) PUC Substantive Rule §25.479, relating to *Issuance and Format of Bills* and §25.480, relating to *Bill Payments and Adjustments* set forth requirements for billing and payments. Should there be different requirements for the billing and payments of pre-pay products? What are appropriate parameters for estimating usage and true-ups for pre-pay products? If a retail electric provider (REP) should be able to offer a bill more frequently, how should PUC Substantive Rule §25.479(b)(1) be modified?

(9) Should a REP be permitted to estimate a customer's consumption in connection with pre-paid services?

(a.) If not, are there any special instances when a REP should be able to bill a customer using estimated consumption? (*e.g.*, when the REP does not have a meter reading from the TDSP, or when a consolidated bill is prepared for multiple electric service identifiers (ESI-IDs))

(b.) If a REP estimates a customer's consumption to issue a bill for prepaid service before receiving the historical usage, and then finds out that the historical usage shows much higher consumption than was estimated, should the REP be permitted to issue a corrected bill?

(10) PUC Substantive Rule §25.483, relating to *Disconnection of Service* sets forth the requirements for disconnecting customers for non-payments including the timing of notices and disconnect for non-payment requests. Should there be different requirements for the disconnections of customers on pre-pay products?

(11) Are there rule requirements other than those mentioned in the questions above that should be different for REPs offering pre-pay products?

(12) Are there additional requirements, such as additional customer protections or record retention requirements, necessary for REPs who are offering pre-pay products? For example, how can prepay service best accommodate customers receiving energy assistance?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Monday, May 26, 2008. All responses should reference Project Number 35533. This notice is not a formal notice of proposed rulemaking, but the parties' responses to the questions will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning this notice should be referred to Christine Wright, Competitive Markets Division, at (512) 936-7376 or christine.wright@puc.state.tx.us.

TRD-200801945
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 14, 2008

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Shamrock, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Shamrock Municipal Airport during the course of the next five years through multiple grants.

Current Project: City of Shamrock. TxDOT CSJ No.: 0825SHMRK. Provide engineering/design services to rehabilitate apron; rehabilitate and mark Runway 17-35 and stub taxiway; and rehabilitate and mark turnarounds Runway 17-35 at Shamrock Municipal Airport.

There is no HUB participation goal for the current project. The TxDOT Project Manager is Charles Graham.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Construct Auto parking
2. Construct access road
3. Install fencing

The City of Shamrock reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avn-info/notice/consult/index.htm** by selecting "Shamrock Municipal Airport". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white

paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **May 16, 2008, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Charles Graham, Project Manager.

TRD-200801964
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 2008

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Notice of Opportunity to Comment - Outdoor Advertising Rules

The Texas Department of Transportation (department) is soliciting comments for potential revisions to the outdoor advertising rules, 43 TAC Chapter 21, Subchapter I, Regulation of Signs Along Interstate and Primary Highways, and Subchapter K, Control of Signs Along Rural Roads. The department is currently reviewing the rules to develop a rule proposal for consideration by the Texas Transportation Commission. Some of the specific issues the department is seeking comments on are: 1) fee structure; 2) methods for streamlining the current regulations; 3) methods to increase consistency between the primary and rural road sign programs; 4) methods to improve consistent enforcement; and 5) restrictions for new billboard construction on both primary and rural roads located in rural areas. The department will accept and review any suggestions for revisions on any subjects in 43 TAC Chapter 21, Subchapters I and K. The department is seeking both general ideas and specific language suggestions. Comments on specific text changes should include the appropriate citations to sections, subsections, paragraphs, etc. for proper reference.

The department will accept written comments concerning these rules. Written comments should be addressed to John Campbell, Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments is 4:00 p.m. June 2, 2008.

The department will not respond individually to comments received pursuant to this notice. The information gathered from the written comments will be used to assist the department in developing rule proposals for the outdoor sign program.

TRD-200801965
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 15, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).